



# **SENATE JOURNAL**

**STATE OF ILLINOIS**

**NINETY-FOURTH GENERAL ASSEMBLY**

**38TH LEGISLATIVE DAY**

**TUESDAY, MAY 10, 2005**

**12:20 O'CLOCK P.M.**

**SENATE**  
**Daily Journal Index**  
**38th Legislative Day**

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The Senate met pursuant to adjournment.  
 Honorable Emil Jones, Jr., President of the Senate, presiding.  
 Prayer by Dr. Zachary Lee, Mt. Paran Missionary Baptist Church, East St. Louis, Illinois.  
 Senator Maloney led the Senate in the Pledge of Allegiance.

Senator Hunter moved that reading and approval of the Journal of Thursday, May 5, 2005, be postponed, pending arrival of the printed Journal.  
 The motion prevailed.

### **LEGISLATIVE MEASURES FILED**

The following Floor amendments to the House Bills listed below have been filed with the Secretary and referred to the Committee on Rules:

Floor Amendment No. 2 to House Bill 315  
 Floor Amendment No. 3 to House Bill 350  
 Floor Amendment No. 4 to House Bill 350  
 Floor Amendment No. 1 to House Bill 383  
 Floor Amendment No. 1 to House Bill 712  
 Floor Amendment No. 1 to House Bill 755  
 Floor Amendment No. 1 to House Bill 873  
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 Floor Amendment No. 3 to House Bill 1074  
 Floor Amendment No. 1 to House Bill 1319  
 Floor Amendment No. 1 to House Bill 1387  
 Floor Amendment No. 1 to House Bill 1565  
 Floor Amendment No. 2 to House Bill 1679  
 Floor Amendment No. 1 to House Bill 2444  
 Floor Amendment No. 2 to House Bill 2462  
 Floor Amendment No. 1 to House Bill 2596  
 Floor Amendment No. 1 to House Bill 3417

The following Floor amendments to the Senate Bills listed below have been filed with the Secretary and referred to the Committee on Rules:

Floor Amendment No. 1 to Senate Bill 2  
 Floor Amendment No. 5 to Senate Bill 750  
 Floor Amendment No. 3 to Senate Bill 1484  
 Floor Amendment No. 2 to Senate Bill 1548

The following Floor amendment to the House Joint Resolution listed below has been filed with the Secretary and referred to the Committee on Rules:

Floor Amendment No. 1 to House Joint Resolution 1

### **PRESENTATION OF RESOLUTIONS**

#### **SENATE RESOLUTION 185**

Offered by Senator Lightford and all Senators:  
 Mourns the death of Sarah A. Miller of Maywood.

By unanimous consent, the foregoing resolution was referred to the Resolutions Consent Calendar.

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Senator Hunter offered the following Senate Resolution, which was referred to the Committee on Rules:

**SENATE RESOLUTION NO. 186**

WHEREAS, Chicago Area Project was established in 1934 as a model for juvenile delinquency prevention and youth and community services; and

WHEREAS, The effectiveness of the Chicago Area Project model has been recognized by the State of Illinois and replicated in many communities throughout the State; and

WHEREAS, Area Projects have formed the Illinois Council of Area Projects; and

WHEREAS, Community services and after-school programs operated by community-based organizations provide opportunities and experiences for our youth that have a positive impact on their development; and

WHEREAS, Chicago Area Project and the Illinois Council of Area Projects are sponsoring Youth Democracy Day on May 11, 2005; and

WHEREAS, Youth Democracy Day celebrates the skills, talents, and potential of our youth and encourages their knowledge of, and involvement in, the democratic process; therefore, be it

RESOLVED, BY THE SENATE OF THE NINETY-FOURTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we congratulate Chicago Area Project and the Illinois Council of Area Projects for sponsoring Youth Democracy Day on May 11, 2005, and encourage the youth of our State to learn about and participate in the democratic process.

**READING BILLS FROM THE HOUSE OF REPRESENTATIVES A FIRST TIME**

**House Bill No. 1429**, sponsored by Senator Righter was taken up, read by title a first time and referred to the Committee on Rules.

**House Bill No. 1555**, sponsored by Senator Maloney was taken up, read by title a first time and referred to the Committee on Rules.

**House Bill No. 3606**, sponsored by Senator Shadid was taken up, read by title a first time and referred to the Committee on Rules.

At the hour of 12:40 o'clock p.m., Senator DeLeo presiding.

**LEGISLATIVE MEASURES FILED**

The following Floor amendments to the House Bills listed below have been filed with the Secretary and referred to the Committee on Rules:

Floor Amendment No. 1 to House Bill 509  
 Floor Amendment No. 1 to House Bill 655  
 Floor Amendment No. 3 to House Bill 669  
 Floor Amendment No. 2 to House Bill 720  
 Floor Amendment No. 1 to House Bill 832

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**READING BILLS FROM THE HOUSE OF REPRESENTATIVES A SECOND TIME**

On motion of Senator Cronin, **House Bill No. 888** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Lightford, **House Bill No. 908** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 909** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Commerce & Economic Development, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 909**

AMENDMENT NO. 1. Amend House Bill 909 on page 6, between lines 18 and 19, by inserting the following:

"Any ordinance adopted by Grundy County that approves the economic development plan shall contain findings that the economic development project is reasonably expected to create or retain not less than 250 full-time equivalent jobs, that private investment in an amount not less than \$50,000,000 is reasonably expected to occur in the economic development project area, that the economic development project will encourage the increase of commerce and industry within the State, thereby reducing the evils attendant upon unemployment and increasing opportunities for personal income, and that the economic development project will increase or maintain the property, sales, and income tax bases of the county and of the State."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 911** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Ronen, **House Bill No. 917** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 923** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 930** was taken up, read by title a second time.

Floor Amendment No. 1 was held in the Committee on Rules.

There being no further amendments, the bill was ordered to a third reading.

On motion of Senator J. Sullivan, **House Bill No. 942** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 947** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 950** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Link, **House Bill No. 973** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 984** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **House Bill No. 991** was taken up, read by title a second time.

Floor Amendment No. 1 was held in the Committee on Rules.

There being no further amendments, the bill was ordered to a third reading.

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On motion of Senator Martinez, **House Bill No. 992** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 996** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 1002** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Viverito, **House Bill No. 1005** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Lightford, **House Bill No. 1051** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **House Bill No. 1058** having been printed, was taken up and read by title a second time.

Committee Amendment No. 1 was postponed in the Committee on Executive.

The following amendment was offered in the Committee on Executive, adopted and ordered printed:

**AMENDMENT NO. 2 TO HOUSE BILL 1058**

AMENDMENT NO. 2. Amend House Bill 1058, on page 2, line 3, after "or", by replacing "parties" with "period of time"; and

on page 2, line 23, after "party", by deleting ", parties,"; and

on page 2, line 25, after "party", by deleting ", parties,"; and

on page 2, line 32, after "party", by deleting the comma; and

on page 2, line 33, by deleting "parties,"; and

on page 3, line 30, after "party", by deleting ", parties,".

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Pankau, **House Bill No. 1071** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on State Government, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1071**

AMENDMENT NO. 1. Amend House Bill 1071 on page 1, by replacing line 16 with the following:  
"electronic mail service provider".

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Collins, **House Bill No. 1077** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Collins, **House Bill No. 1081** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Watson, **House Bill No. 1095** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Lightford, **House Bill No. 1100** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Financial Institutions, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1100**

AMENDMENT NO. 1. Amend House Bill 1100 by replacing everything after the enacting clause with the following:

"Article 1. General Provisions

Section 1-1. Short title. This Act may be cited as the Payday Loan Reform Act.

Section 1-5. Purpose and construction. The purpose of this Act is to protect consumers who enter into payday loans and to regulate the lenders of payday loans. This Act shall be construed as a consumer protection law for all purposes. This Act shall be liberally construed to effectuate its purpose.

Section 1-10. Definitions. As used in this Act:

"Check" means a "negotiable instrument", as defined in Article 3 of the Uniform Commercial Code, that is drawn on a financial institution.

"Commercially reasonable method of verification" or "certified database" means a consumer reporting service database certified by the Department as effective in verifying that a proposed loan agreement is permissible under this Act, or, in the absence of the Department's certification, any reasonably reliable written verification by the consumer concerning (i) whether the consumer has any outstanding payday loans, (ii) the principal amount of those outstanding payday loans, and (iii) whether any payday loans have been paid in full by the consumer in the preceding 7 days.

"Consumer" means any natural person who, singly or jointly with another consumer, enters into a loan.

"Consumer reporting service" means an entity that provides a database certified by the Department.

"Department" means the Department of Financial and Professional Regulation.

"Secretary" means the Secretary of Financial and Professional Regulation.

"Gross monthly income" means monthly income as demonstrated by official documentation of the income, including, but not limited to, a pay stub or a receipt reflecting payment of government benefits, for the period 30 days prior to the date on which the loan is made.

"Lender" and "licensee" mean any person or entity, including any affiliate or subsidiary of a lender or licensee, that offers or makes a payday loan, buys a whole or partial interest in a payday loan, arranges a payday loan for a third party, or acts as an agent for a third party in making a payday loan, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, and includes any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised payday loan or a subterfuge for the purpose of avoiding this Act.

"Loan agreement" means a written agreement between a lender and consumer to make a loan to the consumer, regardless of whether any loan proceeds are actually paid to the consumer on the date on which the loan agreement is made.

"Member of the military" means a person serving in the armed forces of the United States, the Illinois National Guard, or any reserve component of the armed forces of the United States. "Member of the military" includes those persons engaged in (i) active duty, (ii) training or education under the supervision of the United States preliminary to induction into military service, or (iii) a period of active duty with the State of Illinois under Title 10 or Title 32 of the United States Code pursuant to order of the President or the Governor of the State of Illinois.

"Outstanding balance" means the total amount owed by the consumer on a loan to a lender, including all principal, finance charges, fees, and charges of every kind.

"Payday loan" or "loan" means a loan with a finance charge exceeding an annual percentage rate of 36% and with a term that does not exceed 120 days, including any transaction conducted via any medium whatsoever, including, but not limited to, paper, facsimile, Internet, or telephone, in which:

- (1) A lender accepts one or more checks dated on the date written and agrees to hold them for a period of days before deposit or presentment, or accepts one or more checks dated subsequent to the date written and agrees to hold them for deposit; or
- (2) A lender accepts one or more authorizations to debit a consumer's bank account; or

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- (3) A lender accepts an interest in a consumer's wages, including, but not limited to, a wage assignment.

"Principal amount" means the amount received by the consumer from the lender due and owing on a loan, excluding any finance charges, interest, fees, or other loan-related charges.

"Rollover" means to refinance, renew, amend, or extend a loan beyond its original term.

#### Section 1-15. Applicability.

(a) Except as otherwise provided in this Section, this Act applies to any lender that offers or makes a payday loan to a consumer in Illinois.

(b) The provisions of this Act apply to any person or entity that seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

(c) Retail sellers who cash checks incidental to a retail sale and who charge no more than the fees as provided by the Check Cashing Act per check for the service are exempt from the provisions of this Act.

(d) Banks, savings banks, savings and loan associations, credit unions, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States are exempt from the provisions of this Act.

(e) A lender, as defined in Section 1-10, that is an agent for a bank, savings bank, savings and loan association, credit union, or insurance company for the purpose of brokering, selling, or otherwise offering payday loans made by the bank, savings bank, savings and loan association, credit union, or insurance company shall be subject to all of the provisions of this Act, except those provisions related to finance charges.

## Article 2. Payday Loans

#### Section 2-5. Loan terms.

(a) Without affecting the right of a consumer to prepay at any time without cost or penalty, no payday loan may have a minimum term of less than 13 days.

(b) No payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 45 consecutive days. Except as provided under Section 2-40, if a consumer has or has had loans outstanding for a period in excess of 45 consecutive days, no payday lender may offer or make a loan to the consumer for at least 7 calendar days after the date on which the outstanding balance of all payday loans made during the 45 consecutive day period is paid in full. For purposes of this subsection, the term "consecutive days" means a series of continuous calendar days in which the consumer has an outstanding balance on one or more payday loans; however, if a payday loan is made to a consumer within 6 days or less after the outstanding balance of all loans is paid in full, those days are counted as "consecutive days" for purposes of this subsection.

(c) No lender may make a payday loan to a consumer if the total principal amount of the loan, when combined with the principal amount of all of the consumer's other outstanding payday loans, exceeds \$1,000 or 25% of the consumer's gross monthly income, whichever is less.

(d) No payday loan may be made to a consumer who has an outstanding balance on 2 payday loans.

(e) No lender may charge more than \$15.50 per \$100 loaned on any payday loan over the term of the loan. Except as provided in Section 2-25, this charge is considered fully earned as of the date on which the loan is made.

(f) A lender may not take or attempt to take an interest in any of the consumer's personal property to secure a payday loan.

(g) A consumer has the right to redeem a check or any other item described in the definition of payday loan under Section 1-10 issued in connection with a payday loan from the lender holding the check or other item at any time before the payday loan becomes payable by paying the full amount of the check or other item.

Section 2-7. Wage assignments. Any payday loan that is a transaction in which the lender accepts a wage assignment must meet the requirements of this Act, the requirements of the Illinois Wage Assignment Act, and the requirements of 16 C.F.R. 444.2(a)(3)(i)(2003, no subsequent amendments or editions are included). A violation of this Section constitutes a material violation of the Payday Loan Reform Act.

#### Section 2-10. Permitted fees.

(a) If there are insufficient funds to pay a check, Automatic Clearing House (ACH) debit, or any other

item described in the definition of payday loan under Section 1-10 on the day of presentment and only after the lender has incurred an expense, a lender may charge a fee not to exceed \$25. Only one such fee may be collected by the lender with respect to a particular check, ACH debit, or item even if it has been deposited and returned more than once. A lender shall present the check, ACH debit, or other item described in the definition of payday loan under Section 1-10 for payment not more than twice. A fee charged under this subsection (a) is a lender's exclusive charge for late payment.

(b) Except for the finance charges described in Section 2-5 and as specifically allowed by this Section, a lender may not impose on a consumer any additional finance charges, interest, fees, or charges of any sort for any purpose.

#### Section 2-15. Verification.

(a) Before entering into a loan agreement with a consumer, a lender must use a commercially reasonable method of verification to verify that the proposed loan agreement is permissible under this Act.

(b) Within 6 months after the effective date of this Act, the Department shall certify that one or more consumer reporting service databases are commercially reasonable methods of verification. Upon certifying that a consumer reporting service database is a commercially reasonable method of verification, the Department shall:

(1) provide reasonable notice to all licensees identifying the commercially reasonable methods of verification that are available; and

(2) immediately upon certification, require each licensee to use a commercially reasonable method of verification as a means of complying with subsection (a) of this Section.

(c) Except as otherwise provided in this Section, all personally identifiable information regarding any consumer obtained by way of the certified database and maintained by the Department is strictly confidential and shall be exempt from disclosure under Section 7(1)(b)(i) of the Freedom of Information Act.

(d) Notwithstanding any other provision of law to the contrary, a consumer seeking a payday loan may make a direct inquiry to the consumer reporting service to request a more detailed explanation of the basis for a consumer reporting service's determination that the consumer is ineligible for a new payday loan.

(e) In certifying a commercially reasonable method of verification, the Department shall ensure that the certified database:

(1) provides real-time access through an Internet connection or, if real-time access through an Internet connection becomes unavailable to lenders due to a consumer reporting service's technical problems incurred by the consumer reporting service, through alternative verification mechanisms, including, but not limited to, verification by telephone;

(2) is accessible to the Department and to licensees in order to ensure compliance with this Act and in order to provide any other information that the Department deems necessary;

(3) requires licensees to input whatever information is required by the Department;

(4) maintains a real-time copy of the required reporting information that is available to the Department at all times and is the property of the Department;

(5) provides licensees only with a statement that a consumer is eligible or ineligible for a new payday loan and a description of the reason for the determination; and

(6) contains safeguards to ensure that all information contained in the database regarding consumers is kept strictly confidential.

(f) The licensee shall update the certified database by inputting all information required under item (3) of subsection (e):

(1) on the same day that a payday loan is made;

(2) on the same day that a consumer elects a repayment plan, as provided in Section 2-40; and

(3) on the same day that a consumer's payday loan is paid in full.

(g) A licensee may rely on the information contained in the certified database as accurate and is not subject to any administrative penalty or liability as a result of relying on inaccurate information contained in the database.

(h) The certified consumer reporting service shall indemnify the licensee against all claims and actions arising from illegal or willful or wanton acts on the part of the certified consumer reporting service.

#### Section 2-17. Consumer reporting services qualification and bonding.

(a) Each consumer reporting service shall have at all times a net worth of not less than \$1,000,000

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calculated in accordance with generally accepted accounting principles.

(b) Each application for certification under this Act shall be accompanied by a surety bond acceptable to the Department in the amount of \$1,000,000. The surety bond shall be in a form satisfactory to the Department and shall run to the State of Illinois for the benefit of any claimants against the consumer reporting service to secure the faithful performance of its obligations under this Act. The aggregate liability of the surety may exceed the principal sum of the bond. Claimants against the consumer reporting service may themselves bring suit directly on the surety bond or the Department may bring suit on behalf of claimants, either in one action or in successive actions.

(c) The surety bond shall remain in effect until cancellation, which may occur only after 90 days' written notice to the Department. Cancellation shall not affect any liability incurred or accrued during that period.

(d) The surety bond shall remain in place for 5 years after the consumer reporting service ceases operation in the State.

(e) The surety bond proceeds and any cash or other collateral posted as security by a consumer reporting service shall be deemed by operation of law to be held in trust for any claimants under this Act in the event of the bankruptcy of the consumer reporting service.

(f) To the extent that any indemnity or fine exceeds the amount of the surety bond described under this Section, the consumer reporting service shall be liable for that amount.

(g) Each application for certification under this Act shall be accompanied by a nonrefundable investigation fee of \$2,500, together with an initial certification fee of \$1,000.

(h) On or before March 1 of each year, each consumer reporting service qualified under this Section shall pay to the Department a certification fee in the amount of \$1,000.

#### Section 2-20. Required disclosures.

(a) Before a payday loan is made, a lender shall deliver to the consumer a pamphlet prepared by the Secretary that:

(1) explains, in simple English and Spanish, all of the consumer's rights and responsibilities in a payday loan transaction;

(2) includes a toll-free number to the Secretary's office to handle concerns or provide information about whether a lender is licensed, whether complaints have been filed with the Secretary, and the resolution of those complaints; and

(3) provides information regarding the availability of debt management services.

(b) Lenders shall provide consumers with a written agreement that may be kept by the consumer. The written agreement must include the following information in English and in the language in which the loan was negotiated:

(1) the name and address of the lender making the payday loan, and the name and title of the individual employee who signs the agreement on behalf of the lender;

(2) disclosures required by the federal Truth in Lending Act;

(3) a clear description of the consumer's payment obligations under the loan;

(4) the following statement, in at least 14-point bold type face: "You cannot be prosecuted in criminal court to collect this loan.". The information required to be disclosed under this subdivision (4) must be conspicuously disclosed in the loan document and shall be located immediately preceding the signature of the consumer; and

(5) the following statement, in at least 14-point bold type face:

"WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation."

(c) The following notices in English and Spanish must be conspicuously posted by a lender in each location of a business providing payday loans:

(1) A notice that informs consumers that the lender cannot use the criminal process against a consumer to collect any payday loan.

(2) The schedule of all finance charges to be charged on loans with an example of the amounts that would be charged on a \$100 loan payable in 13 days and a \$400 loan payable in 30 days, giving the corresponding annual percentage rate.

(3) In one-inch bold type, a notice to the public in the lending area of each business location containing the following statement:

"WARNING: This loan is not intended to meet long-term financial needs. This loan should be used only to meet short-term cash needs. The cost of your loan may be higher than loans offered by

other lending institutions. This loan is regulated by the Department of Financial and Professional Regulation."

(4) In one-inch bold type, a notice to the public in the lending area of each business location containing the following statement:

"INTEREST-FREE REPAYMENT PLAN: If you still owe on one or more payday loans after 35 days, you are entitled to enter into a repayment plan. The repayment plan will give you at least 55 days to repay your loan in installments with no additional finance charges, interest, fees, or other charges of any kind."

Section 2-25. Right to cancel future payment obligations. A consumer may cancel future payment obligations on a payday loan, without cost or finance charges, no later than the end of the second business day immediately following the day on which the payday loan agreement was executed. To cancel future payment obligations on a payday loan, the consumer must inform the lender in writing that the consumer wants to cancel the future payment obligations on the payday loan and must return the uncashed proceeds, check or cash, in an amount equal to the principal amount of the loan.

Section 2-30. Rollovers prohibited. Rollover of a payday loan by any lender is prohibited. This Section does not prohibit entering into a repayment plan, as provided under Section 2-40.

Section 2-35. Proceeds and payments.

(a) A lender may issue the proceeds of a loan in the form of a check drawn on the lender's bank account, in cash, by money order, by debit card, or by electronic funds transfer. When the proceeds are issued in the form of a check drawn on the lender's bank account, by money order, or by electronic funds transfer, the lender may not charge a fee for cashing the check, money order, or electronic funds transfer. When the proceeds are issued in cash, the lender must provide the consumer with written verification of the cash transaction and shall maintain a record of the transaction for at least 3 years.

(b) After each payment made in full or in part on any loan, the lender shall give the consumer making the payment either a signed, dated receipt or a signed, computer-generated receipt showing the amount paid and the balance due on the loan.

(c) Before a loan is made, the lender must provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in Section 2-20.

(d) The holder or assignee of any loan agreement or of any check written by a consumer in connection with a payday loan takes the loan agreement or check subject to all claims and defenses of the consumer against the maker.

(e) Upon receipt of a check from a consumer for a loan, the lender must immediately stamp the back of the check with an endorsement that states: "This check is being negotiated as part of a loan under the Payday Loan Reform Act, and any holder of this check takes it subject to all claims and defenses of the maker."

(f) Loan payments may be electronically debited from the consumer's bank account. Except as provided by federal law, the lender must obtain prior written approval from the consumer.

(g) A consumer may prepay on a loan in increments of \$5 or more at any time without cost or penalty.

(h) A loan is made on the date on which a loan agreement is signed by both parties, regardless of whether the lender gives any moneys to the consumer on that date.

Section 2-40. Repayment plan.

(a) At the time a payday loan is made, the lender must provide the consumer with a separate written notice signed by the consumer of the consumer's right to request a repayment plan. The written notice must comply with the requirements of subsection (c).

(b) The loan agreement must include the following language in at least 14-point bold type: IF YOU STILL OWE ON ONE OR MORE PAYDAY LOANS AFTER 35 DAYS, YOU ARE ENTITLED TO ENTER INTO A REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST 55 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

(c) At the time a payday loan is made, on the first page of the loan agreement and in a separate document signed by the consumer, the following shall be inserted in at least 14-point bold type: I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE PAYDAY LOANS AFTER 35 DAYS, I AM ENTITLED TO ENTER INTO A REPAYMENT PLAN THAT WILL GIVE ME AT LEAST 55 DAYS TO REPAY THE LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE

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#### CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

(d) If the consumer has or has had one or more payday loans outstanding for 35 consecutive days, any payday loan outstanding on the 35th consecutive day shall be payable under the terms of a repayment plan as provided for in this Section, if the consumer requests the repayment plan. As to any loan that becomes eligible for a repayment plan under this subsection, the consumer has until 28 days after the default date of the loan to request a repayment plan. Within 48 hours after the request for a repayment plan is made, the lender must prepare the repayment plan agreement and both parties must execute the agreement. Execution of the repayment plan agreement shall be made in the same manner in which the loan was made and shall be evidenced in writing.

(e) The terms of the repayment plan for a payday loan must include the following:

(1) The lender may not impose any charge on the consumer for requesting or using a repayment plan. Performance of the terms of the repayment plan extinguishes the consumer's obligation on the loan.

(2) No lender shall charge the consumer any finance charges, interest, fees, or other charges of any kind, except a fee for insufficient funds, as provided under Section 2-10.

(3) The consumer shall be allowed to repay the loan in at least 4 equal installments with at least 13 days between installments, provided that the term of the repayment plan does not exceed 90 days. The first payment under the repayment plan shall not be due before at least 13 days after the repayment plan is signed by both parties. The consumer may prepay the amount due under the repayment plan at any time, without charge or penalty.

(4) The length of time between installments may be extended by the parties so long as the total period of repayment does not exceed 90 days. Any such modification must be in writing and signed by both parties.

(f) Notwithstanding any provision of law to the contrary, a lender is prohibited from making a payday loan to a consumer who has a payday loan outstanding under a repayment plan and for at least 14 days after the outstanding balance of the loan under the repayment plan and the outstanding balance of all other payday loans outstanding during the term of the repayment plan are paid in full.

(g) A lender may not accept postdated checks for payments under a repayment plan.

(h) Notwithstanding any provision of law to the contrary, a lender may voluntarily agree to enter into a repayment plan with a consumer at any time. If a consumer is eligible for a repayment plan under subsection (d), any repayment agreement constitutes a repayment plan under this Section and all provisions of this Section apply to that agreement.

#### Section 2-45. Default.

(a) No legal proceeding of any kind, including, but not limited to, a lawsuit or arbitration, may be filed or initiated against a consumer to collect on a payday loan until 28 days after the default date of the loan, or, in the case of a payday loan under a repayment plan, for 28 days after the default date under the terms of the repayment plan.

(b) Upon and after default, a lender shall not charge the consumer any finance charges, interest, fees, or charges of any kind, other than the insufficient fund fee described in Section 2-10.

(c) Notwithstanding whether a loan is or has been in default, once the loan becomes subject to a repayment plan, the loan shall not be construed to be in default until the default date provided under the terms of the repayment plan.

#### Section 2-50. Practices concerning members of the military.

(a) A lender may not garnish the wages or salaries of a consumer who is a member of the military.

(b) In addition to any rights and obligations provided under the federal Servicemembers Civil Relief Act, a lender shall suspend and defer collection activity against a consumer who is a member of the military and who has been deployed to a combat or combat support posting for the duration of the deployment.

(c) A lender may not knowingly contact the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan.

(d) Lenders must honor the terms of any repayment plan that they have entered into with any consumer, including a repayment agreement negotiated through military counselors or third-party credit counselors.

#### Section 2-55. Information, reporting, and examination.

(a) A licensee shall keep and use books, accounts, and records that will enable the Secretary to

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determine if the licensee is complying with the provisions of this Act and maintain any other records as required by the Secretary.

(b) A licensee shall collect and maintain information annually for a report that shall disclose in detail and under appropriate headings:

- (1) the total number of payday loans made during the preceding calendar year;
- (2) the total number of payday loans outstanding as of December 31 of the preceding calendar year;
- (3) the minimum, maximum, and average dollar amount of payday loans made during the preceding calendar year;
- (4) the average annual percentage rate and the average term of payday loans made during the preceding calendar year; and
- (5) the total number of payday loans paid in full, the total number of loans that went into default, and the total number of loans written off during the preceding calendar year.

The report shall be verified by the oath or affirmation of the owner, manager, or president of the licensee. The report must be filed with the Secretary no later than March 1 of the year following the year for which the report discloses the information specified in this subsection (b). The Secretary may impose upon the licensee a fine of \$25 per day for each day beyond the filing deadline that the report is not filed.

(c) No later than July 31 of the second year following the effective date of this Act, the Department shall publish a biennial report that contains a compilation of aggregate data concerning the payday lending industry and shall make the report available to the Governor, the General Assembly, and the general public.

(d) The Department shall have the authority to conduct examinations of the books, records, and loan documents at any time.

#### Section 2-60. Advertising.

(a) Advertising for loans transacted under this Act may not be false, misleading, or deceptive. Payday loan advertising, if it states a rate or amount of charge for a loan, must state the rate as an annual percentage rate. No licensee may advertise in any manner so as to indicate or imply that its rates or charges for loans are in any way recommended, approved, set, or established by the State government or by this Act.

(b) If any advertisement to which this Section applies states the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

- (1) The amount of the loan.
- (2) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.
- (3) The finance charge expressed as an annual percentage rate.

### Article 3. Licensure

#### Section 3-3. Licensure requirement.

(a) Except as provided in subsection (b), on and after the effective date of this Act, a person or entity acting as a payday lender must be licensed by the Department as provided in this Article.

(b) A person or entity acting as a payday lender who is licensed on the effective date of this Act under the Consumer Installment Loan Act need not comply with subsection (a) until the Department takes action on the person's or entity's application for a payday loan license. The application must be submitted to the Department within 9 months after the effective date of this Act. If the application is not submitted within 9 months after the effective date of this Act, the person or entity acting as a payday lender is subject to subsection (a).

#### Section 3-5. Licensure.

(a) A license to make a payday loan shall state the address, including city and state, at which the business is to be conducted and shall state fully the name of the licensee. The license shall be conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) An application for a license shall be in writing and in a form prescribed by the Secretary. The Secretary may not issue a payday loan license unless and until the following findings are made:

- (1) that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly and within the provisions and purposes of this Act; and



(2) that the applicant has submitted such other information as the Secretary may deem necessary.

(c) A license shall be issued for no longer than one year, and no renewal of a license may be provided if a licensee has substantially violated this Act and has not cured the violation to the satisfaction of the Department.

(d) A licensee shall appoint, in writing, the Secretary as attorney-in-fact upon whom all lawful process against the licensee may be served with the same legal force and validity as if served on the licensee. A copy of the written appointment, duly certified, shall be filed in the office of the Secretary, and a copy thereof certified by the Secretary shall be sufficient evidence to subject a licensee to jurisdiction in a court of law. This appointment shall remain in effect while any liability remains outstanding in this State against the licensee. When summons is served upon the Secretary as attorney-in-fact for a licensee, the Secretary shall immediately notify the licensee by registered mail, enclosing the summons and specifying the hour and day of service.

(e) A licensee must pay an annual fee of \$1,000. In addition to the license fee, the reasonable expense of any examination or hearing by the Secretary under any provisions of this Act shall be borne by the licensee. If a licensee fails to renew its license by December 31, its license shall automatically expire; however, the Secretary, in his or her discretion, may reinstate an expired license upon:

- (1) payment of the annual fee within 30 days of the date of expiration; and
- (2) proof of good cause for failure to renew.

(f) Not more than one place of business shall be maintained under the same license, but the Secretary may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing issuance of a single license. The location, except those locations already in existence as of June 1, 2005, may not be within one mile of a horse race track subject to the Illinois Horse Racing Act of 1975, within one mile of a facility at which gambling is conducted under the Riverboat Gambling Act, within one mile of the location at which a riverboat subject to the Riverboat Gambling Act docks, or within one mile of any State of Illinois or United States military base or naval installation.

(g) No licensee shall conduct the business of making loans under this Act within any office, suite, room, or place of business in which any other business is solicited or engaged in unless the other business is licensed by the Department or, in the opinion of the Secretary, the other business would not be contrary to the best interests of consumers and is authorized by the Secretary in writing.

(h) The Secretary shall maintain a list of licensees that shall be available to interested consumers and lenders and the public. The Secretary shall maintain a toll-free number whereby consumers may obtain information about licensees. The Secretary shall also establish a complaint process under which an aggrieved consumer may file a complaint against a licensee or non-licensee who violates any provision of this Act.

Section 3-10. Closing of business; surrender of license. At least 10 days before a licensee ceases operations, closes the business, or files for bankruptcy, the licensee shall:

(1) Notify the Department of its intended action in writing.

(2) With the exception of filing for bankruptcy, surrender its license to the Secretary for cancellation. The surrender of the license shall not affect the licensee's civil or criminal liability for acts committed before or after the surrender or entitle the licensee to a return of any part of the annual license fee.

(3) Notify the Department of the location where the books, accounts, contracts, and records will be maintained.

The accounts, books, records, and contracts shall be maintained and serviced by the licensee, by another licensee under this Act, or by the Department.

#### Article 4. Administrative Provisions

Section 4-5. Prohibited acts. A licensee or unlicensed person or entity making payday loans may not commit, or have committed on behalf of the licensee or unlicensed person or entity, any of the following acts:

(1) Threatening to use or using the criminal process in this or any other state to collect on the loan.

(2) Using any device or agreement that would have the effect of charging or collecting more fees or charges than allowed by this Act, including, but not limited to, entering into a different type of transaction with the consumer.

(3) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting

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of a payday loan.

- (4) Using or attempting to use the check provided by the consumer in a payday loan as collateral for a transaction not related to a payday loan.
- (5) Knowingly accepting payment in whole or in part of a payday loan through the proceeds of another payday loan provided by any licensee.
- (6) Knowingly accepting any security, other than that specified in the definition of payday loan in Section 1-10, for a payday loan.
- (7) Charging any fees or charges other than those specifically authorized by this Act.
- (8) Threatening to take any action against a consumer that is prohibited by this Act or making any misleading or deceptive statements regarding the payday loan or any consequences thereof.
- (9) Making a misrepresentation of a material fact by an applicant for licensure in obtaining or attempting to obtain a license.
- (10) Including any of the following provisions in loan documents required by subsection (b) of Section 2-20:
  - (A) a confession of judgment clause;
  - (B) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer, unless the waiver is included in an arbitration clause allowed under subparagraph (C) of this paragraph (11);
  - (C) a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers; or
  - (D) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract.
- (11) Selling any insurance of any kind whether or not sold in connection with the making or collecting of a payday loan.
- (12) Taking any power of attorney.
- (13) Taking any security interest in real estate.
- (14) Collecting a delinquency or collection charge on any installment regardless of the period in which it remains in default.
- (15) Collecting treble damages on an amount owing from a payday loan.
- (16) Refusing, or intentionally delaying or inhibiting, the consumer's right to enter into a repayment plan pursuant to this Act.
- (17) Charging for, or attempting to collect, attorney's fees, court costs, or arbitration costs incurred in connection with the collection of a payday loan.
- (18) Making a loan in violation of this Act.
- (19) Garnishing the wages or salaries of a consumer who is a member of the military.
- (20) Failing to suspend or defer collection activity against a consumer who is a member of the military and who has been deployed to a combat or combat-support posting.
- (21) Contacting the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan.

#### Section 4-10. Enforcement and remedies.

- (a) The remedies provided in this Act are cumulative and apply to persons or entities subject to this Act.
- (b) Any material violation of this Act, including the commission of an act prohibited under Section 4-5, constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act.
- (c) If any provision of the written agreement described in subsection (b) of Section 2-20 violates this Act, then that provision is unenforceable against the consumer.
- (d) Subject to the Illinois Administrative Procedure Act, the Secretary may hold hearings, make findings of fact, conclusions of law, issue cease and desist orders, have the power to issue fines of up to \$10,000 per violation, refer the matter to the appropriate law enforcement agency for prosecution under this Act, and suspend or revoke a license granted under this Act. All proceedings shall be open to the public.
- (e) The Secretary may issue a cease and desist order to any licensee or other person doing business without the required license, when in the opinion of the Secretary the licensee or other person is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. The cease and desist order permitted by this subsection (e) may be issued prior to a hearing.

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The Secretary shall serve notice of his or her action, including, but not limited to, a statement of the reasons for the action, either personally or by certified mail, return receipt requested. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

Within 10 days of service of the cease and desist order, the licensee or other person may request a hearing in writing. The Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

If it is determined that the Secretary had the authority to issue the cease and desist order, he or she may issue such orders as may be reasonably necessary to correct, eliminate, or remedy the conduct.

The powers vested in the Secretary by this subsection (e) are additional to any and all other powers and remedies vested in the Secretary by law, and nothing in this subsection (e) shall be construed as requiring that the Secretary shall employ the power conferred in this subsection instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary.

(f) The Secretary may, after 10 days notice by registered mail to the licensee at the address set forth in the license stating the contemplated action and in general the grounds therefore, fine the licensee an amount not exceeding \$10,000 per violation, or revoke or suspend any license issued hereunder if he or she finds that:

(1) the licensee has failed to comply with any provision of this Act or any order, decision, finding, rule, regulation, or direction of the Secretary lawfully made pursuant to the authority of this Act; or

(2) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the Secretary in refusing to issue the license.

The Secretary may fine, suspend, or revoke only the particular license with respect to which grounds for the fine, revocation, or suspension occur or exist, but if the Secretary finds that grounds for revocation are of general application to all offices or to more than one office of the licensee, the Secretary shall fine, suspend, or revoke every license to which the grounds apply.

No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligor.

The Secretary may issue a new license to a licensee whose license has been revoked when facts or conditions which clearly would have warranted the Secretary in refusing originally to issue the license no longer exist.

In every case in which a license is suspended or revoked or an application for a license or renewal of a license is denied, the Secretary shall serve the licensee with notice of his or her action, including a statement of the reasons for his or her actions, either personally, or by certified mail, return receipt requested. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

An order assessing a fine, an order revoking or suspending a license, or an order denying renewal of a license shall take effect upon service of the order unless the licensee requests a hearing, in writing, within 10 days after the date of service. In the event a hearing is requested, the order shall be stayed until a final administrative order is entered.

If the licensee requests a hearing, the Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

The hearing shall be held at the time and place designated by the Secretary. The Secretary and any administrative law judge designated by him or her shall have the power to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books, papers, correspondence, and other records or information that he or she considers relevant or material to the inquiry.

(g) The costs of administrative hearings conducted pursuant to this Section shall be paid by the licensee.

#### Section 4-15. Bonding.

(a) A person or entity engaged in making payday loans under this Act shall post a bond to the Department in the amount of \$50,000 for each location where loans will be made, up to a maximum bond amount of \$500,000.

(b) A bond posted under subsection (a) must continue in effect for the period of licensure and for 3 additional years if the bond is still available. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this Act.

(c) From time to time the Secretary may require a licensee to file a bond in an additional sum if the Secretary determines it to be necessary. In no case shall the bond be more than the

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outstanding liabilities of the licensee.

Section 4-20. Preemption of administrative rules. Any administrative rule promulgated prior to the effective date of this Act by the Department regarding payday loans is preempted.

Section 4-25. Reporting of violations. The Department shall report to the Attorney General all material violations of this Act of which it becomes aware.

Section 4-30. Rulemaking; industry review.

(a) The Department may make and enforce such reasonable rules, regulations, directions, orders, decisions, and findings as the execution and enforcement of the provisions of this Act require, and as are not inconsistent therewith. All rules, regulations, and directions of a general character shall be printed and copies thereof mailed to all licensees.

(b) Within 6 months after the effective date of this Act, the Department shall promulgate reasonable rules regarding the issuance of payday loans by banks, savings banks, savings and loan associations, credit unions, and insurance companies. These rules shall be consistent with this Act and shall be limited in scope to the actual products and services offered by lenders governed by this Act.

(c) After the effective date of this Act, the Department shall, over a 3-year period, conduct a study of the payday loan industry to determine the impact and effectiveness of this Act. The Department shall report its findings to the General Assembly within 3 months of the third anniversary of the effective date of this Act. The study shall determine the effect of this Act on the protection of consumers in this State and on the fair and reasonable regulation of the payday loan industry. The study shall include, but shall not be limited to, an analysis of the ability of the industry to use private reporting tools that:

(1) ensure substantial compliance with this Act, including real time reporting of outstanding payday loans; and

(2) provide data to the Department in an appropriate form and with appropriate content to allow the Department to adequately monitor the industry.

The report of the Department shall, if necessary, identify and recommend specific amendments to this Act to further protect consumers and to guarantee fair and reasonable regulation of the payday loan industry.

Section 4-35. Judicial review. All final administrative decisions of the Department under this Act are subject to judicial review pursuant to the provisions of the Administrative Review Law and any rules adopted pursuant thereto.

Section 4-40. No waivers. There shall be no waiver of any provision of this Act.

Section 4-45. Superiority of Act. To the extent this Act conflicts with any other State financial regulation laws, this Act is superior and supersedes those laws for the purposes of regulating payday loans in Illinois, provided that nothing herein shall apply to any lender that is a bank, savings bank, savings and loan association, credit union, or insurance company organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state or under the laws of the United States.

Section 4-50. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

#### Article 90. Amendatory Provisions

Section 90-5. The Financial Institutions Code is amended by changing Sections 4 and 6 as follows: (20 ILCS 1205/4) (from Ch. 17, par. 104)

Sec. 4. As used in this Act:

(a) "Department" means the Department of Financial Institutions.

(b) "Director" means the Director of Financial Institutions.

(c) "Person" means any individual, partnership, joint venture, trust, estate, firm, corporation, association or cooperative society or association.

(d) "Financial institutions" means ambulatory and community currency exchanges, credit unions,

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guaranteed credit unions, persons engaged in the business of transmitting money to foreign countries or buying and selling foreign money, pawnbrokers' societies, title insuring or guaranteeing companies, and persons engaged in the business of making loans of \$800 or less, all as respectively defined in the laws referred to in Section 6 of this Act. The term includes sales finance agencies, as defined in the "Sales Finance Agency Act", enacted by the 75th General Assembly.

(e) "Payday loan" has the meaning ascribed to that term in the Payday Loan Reform Act.

(Source: Laws 1967, p. 2211.)

(20 ILCS 1205/6) (from Ch. 17, par. 106)

Sec. 6. In addition to the duties imposed elsewhere in this Act, the Department has the following powers:

(1) To exercise the rights, powers and duties vested by law in the Auditor of Public Accounts under "An Act to provide for the incorporation, management and regulation of pawnbrokers' societies and limiting the rate of compensation to be paid for advances, storage and insurance on pawns and pledges and to allow the loaning of money upon personal property", approved March 29, 1899, as amended.

(2) To exercise the rights, powers and duties vested by law in the Auditor of Public Accounts under "An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof", approved June 30, 1943, as amended.

(3) To exercise the rights, powers, and duties vested by law in the Auditor of Public Accounts under "An Act in relation to the buying and selling of foreign exchange and the transmission or transfer of money to foreign countries", approved June 28, 1923, as amended.

(4) To exercise the rights, powers, and duties vested by law in the Auditor of Public Accounts under "An Act to provide for and regulate the business of guaranteeing titles to real estate by corporations", approved May 13, 1901, as amended.

(5) To exercise the rights, powers and duties vested by law in the Department of Insurance under "An Act to define, license, and regulate the business of making loans of eight hundred dollars or less, permitting an interest charge thereon greater than otherwise allowed by law, authorizing and regulating the assignment of wages or salary when taken as security for any such loan or as consideration for a payment of eight hundred dollars or less, providing penalties, and to repeal Acts therein named", approved July 11, 1935, as amended.

(6) To administer and enforce "An Act to license and regulate the keeping and letting of safety deposit boxes, safes, and vaults, and the opening thereof, and to repeal a certain Act therein named", approved June 13, 1945, as amended.

(7) Whenever the Department is authorized or required by law to consider some aspect of criminal history record information for the purpose of carrying out its statutory powers and responsibilities, then, upon request and payment of fees in conformance with the requirements of Section 2605-400 of the Department of State Police Law (20 ILCS 2605/2605-400), the Department of State Police is authorized to furnish, pursuant to positive identification, such information contained in State files as is necessary to fulfill the request.

(8) To administer the Payday Loan Reform Act.

(Source: P.A. 91-239, eff. 1-1-00.)

Section 90-10. The Consumer Installment Loan Act is amended by changing Section 21 as follows:

(205 ILCS 670/21) (from Ch. 17, par. 5427)

Sec. 21. Application of act. This Act does not apply to any person, partnership, association, limited liability company, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings and loan associations, savings banks, credit unions, or licensees under the Residential Mortgage License Act for residential mortgage loans made pursuant to that Act. This Act does not apply to business loans. This Act does not apply to payday loans.

(Source: P.A. 90-437, eff. 1-1-98.)

Section 90-15. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2Z as follows:

(815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

Sec. 2Z. Violations of other Acts. Any person who knowingly violates the Automotive Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services

Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, the Payday Loan Reform Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, or the Automatic Contract Renewal Act commits an unlawful practice within the meaning of this Act.  
(Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950, eff. 1-1-05.)

#### Article 99. Effective Date

Section 99. Effective date. This Act takes effect 180 days after becoming law."

Floor Amendment No. 2 was held in the Committee on Rules.

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 1102** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 1125** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Geo-Karis, **House Bill No. 1132** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator del Valle, **House Bill No. 1133** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Radogno, **House Bill No. 1134** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Demuzio, **House Bill No. 1151** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Lauzen, **House Bill No. 1157** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 1173** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Judiciary, adopted and ordered printed:

#### **AMENDMENT NO. 1 TO HOUSE BILL 1173**

AMENDMENT NO. 1. Amend House Bill 1173 on page 4, line 11, by inserting "or persons employed by law enforcement or prosecuting agencies" after "officers".

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 1181** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Jacobs, **House Bill No. 1182** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Silverstein, **House Bill No. 1301** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Link, **House Bill No. 1310** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Link, **House Bill No. 1311** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Link, **House Bill No. 1313** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Forby, **House Bill No. 1314** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Wilhelmi, **House Bill No. 1315** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Munoz, **House Bill No. 1316** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 1318** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Collins, **House Bill No. 1319** was taken up, read by title a second time. Floor Amendment No. 1 was held in the Committee on Rules. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Winkel, **House Bill No. 1323** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Winkel, **House Bill No. 1324** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Sandoval, **House Bill No. 1333** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Jacobs, **House Bill No. 1339** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 1338** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Munoz, **House Bill No. 1031** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 1343** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 1344** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 1345** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 1349** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Executive, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1349**

AMENDMENT NO. 1. Amend House Bill 1349 by replacing everything after the enacting clause with the following:

"Section 5. The Criminal Code of 1961 is amended by adding Section 24-9.5 as follows:

(720 ILCS 5/24-9.5 new)

Sec. 24-9.5. Handgun safety devices.

(a) It is unlawful for a person licensed as a federal firearms dealer under Section 923 of the federal Gun Control Act of 1968 (18 U.S.C. 923) to offer for sale, sell, or transfer a handgun to a person not licensed under that Act, unless he or she offers for sale, sells, or includes with the handgun a device or mechanism, other than the firearm safety, designed to render the handgun temporarily inoperable or inaccessible. This includes but is not limited to:

(1) An external device that is:

(i) attached to the handgun with a key or combination lock; and

(ii) designed to prevent the handgun from being discharged unless the device has been deactivated.

(2) An integrated mechanical safety, disabling, or locking device that is:

(i) built into the handgun; and

(ii) designed to prevent the handgun from being discharged unless the device has been deactivated.

(b) Sentence. A person who violates this Section is guilty of a Class C misdemeanor and shall be fined not less than \$1,000. A second or subsequent violation of this Section is a Class A misdemeanor.

(c) For the purposes of this Section, "handgun" has the meaning ascribed to it in clause (h)(2) of subsection (A) of Section 24-3 of this Code.

(d) This Section does not apply to:

(1) the purchase, sale, or transportation of a handgun to or by a federally licensed firearms dealer or manufacturer that provides or services a handgun for:

(i) personnel of any unit of the federal government;

(ii) members of the armed forces of the United States or the National Guard;

(iii) law enforcement personnel of the State or any local law enforcement agency in the State while acting within the scope of their official duties; and

(iv) an organization that is required by federal law governing its specific business or activity to maintain handguns and applicable ammunition;

(2) a firearm modified to be permanently inoperative;

(3) the sale or transfer of a handgun by a federally licensed firearms dealer or manufacturer described in item (1) of this subsection (d);

(4) the sale or transfer of a handgun by a federally licensed firearms dealer or manufacturer to a lawful customer outside the State; or

(5) an antique firearm."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 1350** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Collins, **House Bill No. 1351** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Munoz, **House Bill No. 1358** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Forby, **House Bill No. 1370** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Bomke, **House Bill No. 1383** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 1384** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator J. Sullivan, **House Bill No. 1386** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Jacobs, **House Bill No. 1387** was taken up, read by title a second time. Floor Amendment No. 1 was referred to the Committee on Rules earlier today. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 1395** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Jacobs, **House Bill No. 1402** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 1403** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Collins, **House Bill No. 1406** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 1411** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 1428** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Peterson, **House Bill No. 1430** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Dillard, **House Bill No. 1432** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 1434** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Sandoval, **House Bill No. 1445** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Licensed Activities, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1445**

AMENDMENT NO. 1. Amend House Bill 1445 on page 1, lines 11 and 12, by deleting "and includes, but is not limited to."; and

on page 1, line 15, by deleting "sizing of"; and

on page 4, by replacing lines 2 through 6 with the following:

"be prepared by (i) a professional engineer who is licensed under the Professional Engineering Practice Act of 1989. (ii) an architect who is licensed under the Illinois Architecture Practice Act of 1989, or (iii) a holder of a valid NICET level 3 or 4 certification in fire protection technology automatic sprinkler system layout who is either licensed under this Act or employed by an organization".

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Sandoval, **House Bill No. 1458** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 1480** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Labor, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1480**

AMENDMENT NO. 1. Amend House Bill 1480 on page 3, by replacing line 2 with the

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following:

"accessible for construction, maintenance, and emergency repair work."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 1483** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Sieben, **House Bill No. 1486** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Demuzio, **House Bill No. 1487** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Higher Education, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1487**

AMENDMENT NO. 1. Amend House Bill 1487 as follows:

on page 1, line 24, after "college," by inserting the following: "Also beginning on July 1, 2005, one of the 11 members appointed by the Governor, by and with the advice and consent of the Senate, must be a member of the board of trustees of a public community college district. The membership requirements set forth in this Section apply only to the State Board and shall have no effect on the membership of the board of trustees of a community college district."; and

on page 2, line 11, by replacing "college," with "college,".

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Haine, **House Bill No. 1500** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Schoenberg, **House Bill No. 1522** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Silverstein, **House Bill No. 1523** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Winkel, **House Bill No. 1527** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Pankau, **House Bill No. 1529** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **House Bill No. 1540** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 1549** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Righter, **House Bill No. 1550** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Dillard, **House Bill No. 1559** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 1570** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Watson, **House Bill No. 1571** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Watson, **House Bill No. 1574** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Winkel, **House Bill No. 1575** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 1587** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 1588** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Wilhelmi, **House Bill No. 1589** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on State Government, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 1589**

AMENDMENT NO. 1. Amend House Bill 1589 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Human Voice Contact Act.

Section 5. Legislative findings. The General Assembly finds that:

- (1) the people of this State, from time to time, need contact with State agencies because of problems or concerns;
- (2) often when a person calls a State agency that person needs to talk to an individual, and it is not necessarily convenient or practical for that person to leave a message or to follow an automated menu;
- (3) the purpose of State agencies is to serve the people of this State in a manner that is as accessible, efficient, and responsive as possible;
- (4) when a person calls a State agency and receives an automated operator or an automated menu instead of a live operator, often that person is not able to adequately receive assistance or services; and
- (5) the number of people calling a State agency and not getting the assistance or services that they are entitled to because the State agency does not have a live operator answering incoming phone calls grows by the day.

Section 10. Definition. In this Act, "State agency" means the same as in Section 1-7 of the Illinois State Auditing Act.

Section 15. Automated telephone answering equipment. A State agency that uses automated telephone answering equipment to answer incoming telephone calls must, during the normal business hours of the agency, provide the caller with the option of speaking to a live operator. This Section does not apply to field offices, telephone lines dedicated as hot lines for emergency services, telephone lines dedicated to providing general information, and any system that is designed to permit an individual to conduct a complete transaction with the State agency over the telephone solely by pressing one or more touch tone telephone keys in response to automated prompts.

Section 99. Effective date. This Act takes effect January 1, 2007."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Munoz, **House Bill No. 1597** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Silverstein, **House Bill No. 1633** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 1656** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 1679** was taken up, read by title a second time. Committee Amendment No. 1 and Floor Amendment No. 2 were held in the Committee on Rules. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 2077** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 2242** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Garrett, **House Bill No. 2244** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on State Government, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 2244**

AMENDMENT NO. 1. Amend House Bill 2244 by replacing everything after the enacting clause with the following:

"Section 5. The Voluntary Payroll Deductions Act of 1983 is amended by changing Section 3 as follows:

(5 ILCS 340/3) (from Ch. 15, par. 503)

Sec. 3. Definitions. As used in this Act unless the context otherwise requires:

(a) "Employee" means any regular officer or employee who receives salary or wages for personal services rendered to the State of Illinois, and includes an individual hired as an employee by contract with that individual.

(b) "Qualified organization" means an organization representing one or more benefiting agencies, which organization is designated by the State Comptroller as qualified to receive payroll deductions under this Act. An organization desiring to be designated as a qualified organization shall:

(1) Submit written designations on forms approved by the State Comptroller by 4,000 or more employees or State annuitants, in which such employees or State annuitants indicate that the organization is one for which the employee or State annuitant intends to authorize withholding. The forms shall require the name, last 4 digits only of the social security number, and employing State agency for each employee. Upon notification by the Comptroller that such forms have been approved, the organization shall, within 30 days, notify in writing the Governor or his or her designee of its intention to obtain the required number of designations. Such organization shall have 12 months from that date to obtain the necessary designations and return to the State Comptroller's office the completed designations, which shall be subject to verification procedures established by the State Comptroller;

(2) Certify that all benefiting agencies are tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(3) Certify that all benefiting agencies are in compliance with the Illinois Human Rights Act;

(4) Certify that all benefiting agencies are in compliance with the Charitable Trust Act and the Solicitation for Charity Act;

(5) Certify that all benefiting agencies actively conduct health or welfare programs and provide services to individuals directed at one or more of the following common human needs within a community: service, research, and education in the health fields; family and child care services; protective services for children and adults; services for children and adults in foster care; services related to the management and maintenance of the home; day care services for adults; transportation services; information, referral and counseling services; services to eliminate illiteracy; the preparation and delivery of meals; adoption services; emergency shelter care and relief services;

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disaster relief services; safety services; neighborhood and community organization services; recreation services; social adjustment and rehabilitation services; health support services; or a combination of such services designed to meet the special needs of specific groups, such as children and youth, the ill and infirm, and the physically handicapped; and that all such benefiting agencies provide the above described services to individuals and their families in the community and surrounding area in which the organization conducts its fund drive, or that such benefiting agencies provide relief to victims of natural disasters and other emergencies on a where and as needed basis;

(6) Certify that the organization has disclosed the percentage of the organization's total collected receipts from employees or State annuitants that are distributed to the benefiting agencies and the percentage of the organization's total collected receipts from employees or State annuitants that are expended for fund-raising and overhead costs. These percentages shall be the same percentage figures annually disclosed by the organization to the Attorney General. The disclosure shall be made to all solicited employees and State annuitants and shall be in the form of a factual statement on all petitions and in the campaign's brochures for employees and State annuitants;

(7) Certify that all benefiting agencies receiving funds which the employee or State annuitant has requested or designated for distribution to a particular community and surrounding area use a majority of such funds distributed for services in the actual provision of services in that community and surrounding area;

(8) Certify that neither it nor its member organizations will solicit State employees for contributions at their workplace, except pursuant to this Act and the rules promulgated thereunder. Each qualified organization, and each participating United Fund, is encouraged to cooperate with all others and with all State agencies and educational institutions so as to simplify procedures, to resolve differences and to minimize costs;

(9) Certify that it will pay its share of the campaign costs and will comply with the Code of Campaign Conduct as approved by the Governor or other agency as designated by the Governor; and

(10) Certify that it maintains a year-round office, the telephone number, and person responsible for the operations of the organization in Illinois. That information shall be provided to the State Comptroller at the time the organization is seeking participation under this Act.

Each qualified organization shall submit to the State Comptroller between January 1 and March 1 of each year, a statement that the organization is in compliance with all of the requirements set forth in paragraphs (2) through (10). The State Comptroller shall exclude any organization that fails to submit the statement from the next solicitation period.

In order to be designated as a qualified organization, the organization shall have existed at least 2 years prior to submitting the written designation forms required in paragraph (1) and shall certify to the State Comptroller that such organization has been providing services described in paragraph (5) in Illinois. If the organization seeking designation represents more than one benefiting agency, it need not have existed for 2 years but shall certify to the State Comptroller that each of its benefiting agencies has existed for at least 2 years prior to submitting the written designation forms required in paragraph (1) and that each has been providing services described in paragraph (5) in Illinois.

Organizations which have met the requirements of this Act shall be permitted to participate in the State and Universities Combined Appeal as of January 1st of the year immediately following their approval by the Comptroller.

Where the certifications described in paragraphs (2), (3), (4), (5), (6), (7), (8), (9), and (10) above are made by an organization representing more than one benefiting agency they shall be based upon the knowledge and belief of such qualified organization. Any qualified organization shall immediately notify the State Comptroller in writing if the qualified organization receives information or otherwise believes that a benefiting agency is no longer in compliance with the certification of the qualified organization. A qualified organization representing more than one benefiting agency shall thereafter withhold and refrain from distributing to such benefiting agency those funds received pursuant to this Act until the benefiting agency is again in compliance with the qualified organization's certification. The qualified organization shall immediately notify the State Comptroller of the benefiting agency's resumed compliance with the certification, based upon the qualified organization's knowledge and belief, and shall pay over to the benefiting agency those funds previously withheld.

In order to qualify, a qualified organization must receive 250 deduction pledges from the immediately preceding solicitation period as set forth in Section 6. The Comptroller shall, by February 1st of each year, so notify any qualified organization that failed to receive the minimum deduction requirement. ~~at least 500 payroll deduction pledges during each immediately preceding solicitation period as set forth in Section 6.~~ The notification shall give such qualified organization until March 1st to provide the

Comptroller with documentation that the minimum \$00 deduction requirement has been met. On the basis of all the documentation, the Comptroller shall, by March 15th of each year, submit to the Governor or his or her designee, or such other agency as may be determined by the Governor, a list of all organizations which have met the minimum \$00 payroll deduction requirement. Only those organizations which have met such requirements, as well as the other requirements of this Section, shall be permitted to solicit State employees or State annuitants for voluntary contributions, and the Comptroller shall discontinue withholding for any such organization which fails to meet these requirements, except qualified organizations that received deduction pledges during the 2004 solicitation period are deemed to be qualified for the 2005 solicitation period.

(c) "United Fund" means the organization conducting the single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and services purposes, which is commonly known as the United Fund, or the organization which serves in place of the United Fund organization in communities where an organization known as the United Fund is not organized.

In order for a United Fund to participate in the State and Universities Employees Combined Appeal, it shall comply with the provisions of paragraph (9) of subsection (b).

(d) "State and Universities Employees Combined Appeal", otherwise known as "SECA", means the State-directed joint effort of all of the qualified organizations, together with the United Funds, for the solicitation of voluntary contributions from State and University employees and State annuitants.

(e) "Retirement system" means any or all of the following: the General Assembly Retirement System, the State Employees' Retirement System of Illinois, the State Universities Retirement System, the Teachers' Retirement System of the State of Illinois, and the Judges Retirement System.

(f) "State annuitant" means a person receiving an annuity or disability benefit under Article 2, 14, 15, 16, or 18 of the Illinois Pension Code.

(Source: P.A. 91-357, eff. 7-29-99; 91-533, eff. 8-13-99; 91-896, eff. 7-6-00; 92-634, eff. 7-11-02.)

Section 99. Effective date. This Act takes effect upon becoming law."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 2250** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 2260** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 2341** was taken up, read by title a second time and ordered to a third reading.

### MOTION IN WRITING

Senator Viverito, Senator Cullerton, Senator Hendon, Senator Petka and Senator Roskam submitted the following Motion in Writing:

Pursuant to Senate Rule 3-7, we move that the following Senate Bills be re-referred to the Senate Rules Committee:

**SENATE BILLS 29, 55, 56, 71, 73, 103, 113, 118, 130, 134, 146, 149, 166, 167, 168, 177, 178, 179, 180, 181, 182, 194, 195, 196, 207, 212, 213, 218, 228, 237, 238, 240, 249, 258, 259, 267, 268, 269, 281, 282, 289, 314, 315, 342, 344, 351, 374, 376, 386, 387, 408, 410, 418, 421, 425, 428, 437, 448, 453, 462, 474, 515, 532, 540, 548, 551, 552, 573, 576, 578, 579, 580, 614, 617, 772, 773, 777, 779, 781, 782, 783, 784, 785, 786, 787, 788, 818, 944, 1094, 1224, 1229, 1231, 1295, 1303, 1327, 1329, 1450, 1455, 1456, 1473, 1496, 1504, 1506, 1507, 1508, 1510, 1511, 1512, 1513, 1643, 1653, 1691, 1692, 1695, 1713, 1721, 1724, 1725, 1743, 1744, 1764, 1766, 1805, 1808, 1810, 1811, 1837, 1838, 1845, 1846, 1852, 1859, 1861, 1871, 1872, 1877, 1881, 1886, 1887, 1902, 1918, 1919, 1920, 1921, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1958, 1961, 1963, 1998, 2006, 2013, 2028, 2031, 2041, 2050, 2051, 2056, 2057, 2069, 2073, 2074, 2077, 2096, 2100, 2105 and 2114.**

[May 10, 2005]

s/Senator Louis I. Viverito  
Chairman, Senate Rules Committee

s/Senator John Cullerton  
Member, Senate Rules Committee

s/Senator Rickey Hendon  
Member, Senate Rules Committee

s/Senator Ed Petka  
Minority Spokesman, Senate Rules Committee

s/Senator Peter Roskam  
Member, Senate Rules Committee

The foregoing Motion in Writing was filed with the Secretary and placed on the Senate Calendar.

#### **REPORT FROM RULES COMMITTEE**

Senator Viverito, Chairperson of the Committee on Rules, during its May 10, 2005 meeting, reported the following Legislative Measure has been assigned to the indicated Standing Committee of the Senate:

Appropriations II: **Floor Amendment No. 2 to Senate Bill 1548.**

#### **READING BILLS FROM THE HOUSE OF REPRESENTATIVES A SECOND TIME**

On motion of Senator Garrett, **House Bill No. 2344** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 2345** was taken up, read by title a second time. Floor Amendment No. 1 was held in the Committee on Rules.  
There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Schoenberg, **House Bill No. 2347** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Pankau, **House Bill No. 2348** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 2375** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 2379** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 2386** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Rutherford, **House Bill No. 2389** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 2404** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator J. Sullivan, **House Bill No. 2407** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Harmon, **House Bill No. 2408** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Forby, **House Bill No. 2411** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Meeks, **House Bill No. 2417** was taken up, read by title a second time. Committee Amendment No. 1 and Floor Amendment No. 2 were held in the Committee on Rules. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Garrett, **House Bill No. 2421** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Demuzio, **House Bill No. 2435** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 2441** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 2444** was taken up, read by title a second time. Floor Amendment No. 1 was held in the Committee on Rules. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 2445** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 2449** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Shadid, **House Bill No. 2453** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Garrett, **House Bill No. 2455** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 2460** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Lightford, **House Bill No. 2461** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hendon, **House Bill No. 2462** was taken up, read by title a second time. Floor Amendments numbered 1 and 2 were held in the Committee on Rules. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 2467** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **House Bill No. 2470** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 2487** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **House Bill No. 2490** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Silverstein, **House Bill No. 2492** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Winkel, **House Bill No. 2500** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Munoz, **House Bill No. 2510** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Garrett, **House Bill No. 2515** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 2525** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Forby, **House Bill No. 2527** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Forby, **House Bill No. 2528** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Clayborne, **House Bill No. 2547** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Risinger, **House Bill No. 2550** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Ronen, **House Bill No. 2564** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Wilhelmi, **House Bill No. 2566** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Ronen, **House Bill No. 2572** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 2577** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 2582** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Judiciary, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 2582**

AMENDMENT NO. 1. Amend House Bill 2582 by replacing everything after the enacting clause with the following:

"Section 5. The Illinois Controlled Substances Act is amended by changing Section 101 as follows:  
(720 ILCS 570/101) (from Ch. 56 1/2, par. 1101)  
Sec. 101. This Act shall be known as and ~~and~~ may be cited as the "Illinois Controlled Substances Act.  
(Source: P.A. 77-757.)".

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Ronen, **House Bill No. 2589** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 2593** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 2594** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 2595** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 2613** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Rutherford, **House Bill No. 2689** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Wilhelmi, **House Bill No. 2693** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Althoff, **House Bill No. 2696** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Pankau, **House Bill No. 2697** was taken up, read by title a second time. Committee Amendment No. 1 was tabled in the Committee on Executive. There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Maloney, **House Bill No. 2699** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Sieben, **House Bill No. 2920** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Sieben, **House Bill No. 3022** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Geo-Karis, **House Bill No. 3033** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Munoz, **House Bill No. 3045** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 3048** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Environment & Energy, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 3048**

AMENDMENT NO. 1. Amend House Bill 3048 as follows:

on page 2, by replacing line 8 with the following:

"licensure. The Department may accept the Portable Sanitation Association International's Health and Safety Certification Program as an acceptable educational and testing program."; and

on page 2, by replacing lines 21 and 22, with the following:

"(2) Soap or anti-bacterial hand cleanser and paper products shall be refilled in each unit at each pumping, if required."

There being no further amendments, the bill, as amended, was ordered to a third reading.

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On motion of Senator Harmon, **House Bill No. 3066** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Peterson, **House Bill No. 3095** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Jacobs, **House Bill No. 3258** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 3415** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Sandoval, **House Bill No. 3420** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 3449** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Dillard, **House Bill No. 3451** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator del Valle, **House Bill No. 3471** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 3472** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Silverstein, **House Bill No. 3485** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Maloney, **House Bill No. 3488** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 3498** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Righter, **House Bill No. 3507** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Harmon, **House Bill No. 3538** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 3564** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Demuzio, **House Bill No. 3576** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 3595** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Haine, **House Bill No. 3597** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Jacobs, **House Bill No. 3622** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Cullerton, **House Bill No. 3628** having been printed, was taken up and read by title a second time.

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Committee Amendment No. 1 was held in the Committee on Rules.

The following amendments were offered in the Committee on Judiciary, adopted and ordered printed:

**AMENDMENT NO. 2 TO HOUSE BILL 3628**

AMENDMENT NO. 2. Amend House Bill 3628 by replacing everything after the enacting clause with the following:

"Section 5. The Child Care Act of 1969 is amended by changing Sections 2, 2.05, 2.08, 4, 7, 8, 11, 11.1, and 12 and by adding Sections 2.24, 2.25, 2.26, 2.27, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 8.3, 8.4, 9.1a, 9.1b, 14.6, and 14.7 as follows:

(225 ILCS 10/2) (from Ch. 23, par. 2212)

Sec. 2. Terms used in this Act, unless the context otherwise requires, have the meanings ascribed to them in Sections 2.01 through 2.27 ~~2.24~~.

(Source: P.A. 86-278; 86-386.)

(225 ILCS 10/2.05) (from Ch. 23, par. 2212.05)

Sec. 2.05. "Facility for child care" or "child care facility" means any person, group of persons, agency, association, ~~or~~ organization, corporation, institution, center, or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children. "Child care facility" includes a relative who is licensed as a foster family home under Section 4 of this Act.

(Source: P.A. 89-21, eff. 7-1-95.)

(225 ILCS 10/2.08) (from Ch. 23, par. 2212.08)

Sec. 2.08.

"Child welfare agency" means a public or private child care facility, receiving any child or children for the purpose of placing or arranging for the placement or free care of the child or children in foster family homes, unlicensed pre-adoptive and adoptive homes, or other facilities for child care, apart from the custody of the child's or children's parents. The term "child welfare agency" includes all agencies established and maintained by a municipality or other political subdivision of the State of Illinois to protect, guard, train or care for children outside their own homes and all agencies, persons, groups of persons, associations, organizations, corporations, institutions, centers, or groups providing adoption services, but does not include any circuit court or duly appointed juvenile probation officer or youth counselor of the court; who receives and places children under an order of the court.

(Source: P.A. 76-63.)

(225 ILCS 10/2.24 new)

Sec. 2.24. "Adoption services" includes any one or more of the following services performed for any type of compensation or thing of value, directly or indirectly: (i) arranging for the placement of or placing out a child, (ii) identifying a child for adoption, (iii) matching adoptive parents with biological parents, (iv) arranging or facilitating an adoption, (v) taking or acknowledging consents or surrenders for termination of parental rights for purposes of adoption, as defined in the Adoption Act, (vi) performing background studies on a child or adoptive parents, (vii) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child, or (viii) post-placement monitoring of a child prior to adoption. "Adoption services" does not include the following: (1) the provision of legal services by a licensed attorney for which the attorney must be licensed as an attorney under Illinois law, (2) adoption-related services performed by public governmental entities or entities or persons performing investigations by court appointment as described in subsection A of Section 6 of the Adoption Act, (3) prospective biological parents or adoptive parents operating on their own behalf, (4) the provision of general education and training on adoption-related topics, or (5) post-adoption services, including supportive services to families to promote the well-being of members of adoptive families or birth families.

(225 ILCS 10/2.25 new)

Sec. 2.25. "Unlicensed pre-adoptive and adoptive home" means any home that is not licensed by the Department as a foster family home and that receives a child or children for the purpose of adopting the child or children.

(225 ILCS 10/2.26 new)

Sec. 2.26. "Eligible agency" means a licensed child welfare agency that (i) is currently fully accredited by the Council on Accreditation for Children and Family Services (COA) for adoption services and (ii) has had no Department substantiated licensing violations or COA accrediting violations that affect the

health, safety, morals, or welfare of children served by that agency for the 4 years immediately preceding a determination of eligibility.

(225 ILCS 10/2.27 new)

Sec. 2.27. "Deemed compliant" means that an eligible agency is presumed to be in compliance with requirements, provided that the Department has determined that current COA standards are at least substantially equivalent to those requirements. This presumption of compliance may be rebutted by Department substantiated evidence to the contrary. The Department may require periodic certification of COA accreditation from eligible agencies.

(225 ILCS 10/4) (from Ch. 23, par. 2214)

Sec. 4. License requirement; application; notice.

(a) Any person, group of persons or corporation who or which receives children or arranges for care or placement of one or more children unrelated to the operator must apply for a license to operate one of the types of facilities defined in Sections 2.05 through 2.19 and in Section 2.22 of this Act. Any relative who receives a child or children for placement by the Department on a full-time basis may apply for a license to operate a foster family home as defined in Section 2.17 of this Act.

(a-5) Any agency, person, group of persons, association, organization, corporation, institution, center, or group providing adoption services must be licensed by the Department as a child welfare agency as defined in Section 2.08 of this Act. "Providing adoption services" as used in this Act, includes facilitating or engaging in adoption services.

(b) Application for a license to operate a child care facility must be made to the Department in the manner and on forms prescribed by it. An application to operate a foster family home shall include, at a minimum: a completed written form; written authorization by the applicant and all adult members of the applicant's household to conduct a criminal background investigation; medical evidence in the form of a medical report, on forms prescribed by the Department, that the applicant and all members of the household are free from communicable diseases or physical and mental conditions that affect their ability to provide care for the child or children; the names and addresses of at least 3 persons not related to the applicant who can attest to the applicant's moral character; and fingerprints submitted by the applicant and all adult members of the applicant's household.

(c) The Department shall notify the public when a child care institution, maternity center, or group home licensed by the Department undergoes a change in (i) the range of care or services offered at the facility, (ii) the age or type of children served, or (iii) the area within the facility used by children. The Department shall notify the public of the change in a newspaper of general circulation in the county or municipality in which the applicant's facility is or is proposed to be located.

(d) If, upon examination of the facility and investigation of persons responsible for care of children, the Department is satisfied that the facility and responsible persons reasonably meet standards prescribed for the type of facility for which application is made, it shall issue a license in proper form, designating on that license the type of child care facility and, except for a child welfare agency, the number of children to be served at any one time.

(e) The Department shall not issue or renew the license of any child welfare agency providing adoption services, unless the agency (i) is officially recognized by the United States Internal Revenue Service as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law) and (ii) is in compliance with all of the standards necessary to maintain its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law). The Department shall grant a grace period of 24 months from the effective date of this amendatory Act of the 94th General Assembly for existing child welfare agencies providing adoption services to obtain 501(c)(3) status. The Department shall permit an existing child welfare agency that converts from its current structure in order to be recognized as a 501(c)(3) organization as required by this Section to either retain its current license or transfer its current license to a newly formed entity, if the creation of a new entity is required in order to comply with this Section, provided that the child welfare agency demonstrates that it continues to meet all other licensing requirements and that the principal officers and directors and programs of the converted child welfare agency or newly organized child welfare agency are substantially the same as the original. The Department shall have the sole discretion to grant a one year extension to any agency unable to obtain 501(c)(3) status within the timeframe specified in this subsection (e), provided that such agency has filed an application for 501(c)(3) status with the Internal Revenue Service within the 2-year timeframe specified in this subsection (e).

(Source: P.A. 89-21, eff. 7-1-95; 90-90, eff. 7-11-97; 90-608, eff. 6-30-98.)

(225 ILCS 10/7) (from Ch. 23, par. 2217)

Sec. 7. (a) The Department must prescribe and publish minimum standards for licensing that apply to

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the various types of facilities for child care defined in this Act and that are equally applicable to like institutions under the control of the Department and to foster family homes used by and under the direct supervision of the Department. The Department shall seek the advice and assistance of persons representative of the various types of child care facilities in establishing such standards. The standards prescribed and published under this Act take effect as provided in the Illinois Administrative Procedure Act, and are restricted to regulations pertaining to the following matters and to any rules and regulations required or permitted by any other Section of this Act:

- (1) The operation and conduct of the facility and responsibility it assumes for child care;
  - (2) The character, suitability and qualifications of the applicant and other persons directly responsible for the care and welfare of children served. All child day care center licensees and employees who are required to report child abuse or neglect under the Abused and Neglected Child Reporting Act shall be required to attend training on recognizing child abuse and neglect, as prescribed by Department rules;
  - (3) The general financial ability and competence of the applicant to provide necessary care for children and to maintain prescribed standards;
  - (4) The number of individuals or staff required to insure adequate supervision and care of the children received. The standards shall provide that each child care institution, maternity center, day care center, group home, day care home, and group day care home shall have on its premises during its hours of operation at least one staff member certified in first aid, in the Heimlich maneuver and in cardiopulmonary resuscitation by the American Red Cross or other organization approved by rule of the Department. Child welfare agencies shall not be subject to such a staffing requirement. The Department may offer, or arrange for the offering, on a periodic basis in each community in this State in cooperation with the American Red Cross, the American Heart Association or other appropriate organization, voluntary programs to train operators of foster family homes and day care homes in first aid and cardiopulmonary resuscitation;
  - (5) The appropriateness, safety, cleanliness and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to State laws and municipal codes to provide for the physical comfort, care and well-being of children received;
  - (6) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the healthy physical, mental and spiritual development of children served;
  - (7) Provisions to safeguard the legal rights of children served;
  - (8) Maintenance of records pertaining to the admission, progress, health and discharge of children, including, for day care centers and day care homes, records indicating each child has been immunized as required by State regulations. The Department shall require proof that children enrolled in a facility have been immunized against Haemophilus Influenzae B (HIB);
  - (9) Filing of reports with the Department;
  - (10) Discipline of children;
  - (11) Protection and fostering of the particular religious faith of the children served;
  - (12) Provisions prohibiting firearms on day care center premises except in the possession of peace officers;
  - (13) Provisions prohibiting handguns on day care home premises except in the possession of peace officers or other adults who must possess a handgun as a condition of employment and who reside on the premises of a day care home;
  - (14) Provisions requiring that any firearm permitted on day care home premises, except handguns in the possession of peace officers, shall be kept in a disassembled state, without ammunition, in locked storage, inaccessible to children and that ammunition permitted on day care home premises shall be kept in locked storage separate from that of disassembled firearms, inaccessible to children;
  - (15) Provisions requiring notification of parents or guardians enrolling children at a day care home of the presence in the day care home of any firearms and ammunition and of the arrangements for the separate, locked storage of such firearms and ammunition.
- (b) If, in a facility for general child care, there are children diagnosed as mentally ill, mentally retarded or physically handicapped, who are determined to be in need of special mental treatment or of nursing care, or both mental treatment and nursing care, the Department shall seek the advice and recommendation of the Department of Human Services, the Department of Public Health, or both Departments regarding the residential treatment and nursing care provided by the institution.
- (c) The Department shall investigate any person applying to be licensed as a foster parent to determine

whether there is any evidence of current drug or alcohol abuse in the prospective foster family. The Department shall not license a person as a foster parent if drug or alcohol abuse has been identified in the foster family or if a reasonable suspicion of such abuse exists, except that the Department may grant a foster parent license to an applicant identified with an alcohol or drug problem if the applicant has successfully participated in an alcohol or drug treatment program, self-help group, or other suitable activities.

(d) The Department, in applying standards prescribed and published, as herein provided, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a license and to help them otherwise to achieve programs of excellence related to the care of children served. Such consultation shall include providing information concerning education and training in early childhood development to providers of day care home services. The Department may provide or arrange for such education and training for those providers who request such assistance.

(e) The Department shall distribute copies of licensing standards to all licensees and applicants for a license. Each licensee or holder of a permit shall distribute copies of the appropriate licensing standards and any other information required by the Department to child care facilities under its supervision. Each licensee or holder of a permit shall maintain appropriate documentation of the distribution of the standards. Such documentation shall be part of the records of the facility and subject to inspection by authorized representatives of the Department.

(f) The Department shall prepare summaries of day care licensing standards. Each licensee or holder of a permit for a day care facility shall distribute a copy of the appropriate summary and any other information required by the Department, to the legal guardian of each child cared for in that facility at the time when the child is enrolled or initially placed in the facility. The licensee or holder of a permit for a day care facility shall secure appropriate documentation of the distribution of the summary and brochure. Such documentation shall be a part of the records of the facility and subject to inspection by an authorized representative of the Department.

(g) The Department shall distribute to each licensee and holder of a permit copies of the licensing or permit standards applicable to such person's facility. Each licensee or holder of a permit shall make available by posting at all times in a common or otherwise accessible area a complete and current set of licensing standards in order that all employees of the facility may have unrestricted access to such standards. All employees of the facility shall have reviewed the standards and any subsequent changes. Each licensee or holder of a permit shall maintain appropriate documentation of the current review of licensing standards by all employees. Such records shall be part of the records of the facility and subject to inspection by authorized representatives of the Department.

(h) Any standards involving physical examinations, immunization, or medical treatment shall include appropriate exemptions for children whose parents object thereto on the grounds that they conflict with the tenets and practices of a recognized church or religious organization, of which the parent is an adherent or member, and for children who should not be subjected to immunization for clinical reasons. (Source: P.A. 89-274, eff. 1-1-96; 89-507, eff. 7-1-97; 89-648, eff. 8-9-96; 90-14, eff. 7-1-97.)

(225 ILCS 10/7.4 new)

Sec. 7.4. Disclosures.

(a) Every child welfare agency providing adoption services and licensed by the Department shall provide to all prospective clients and to the public written disclosures with respect to its adoption services, policies, and practices, including general eligibility criteria, fees, and the mutual rights and responsibilities of clients, including biological parents and adoptive parents. The written disclosure shall be posted on any website maintained by the child welfare agency that relates to adoption services. The Department shall adopt rules relating to the contents of the written disclosures. Eligible agencies may be deemed compliant with this subsection (a).

(b) Every licensed child welfare agency providing adoption services shall provide to all applicants, prior to application, a written schedule of estimated fees, expenses, and refund policies. Every child welfare agency providing adoption services shall have a written policy that shall be part of its standard adoption contract and state that it will not charge additional fees and expenses beyond those disclosed in the adoption contract unless additional fees are reasonably required by the circumstances and are disclosed to the adoptive parents or parent before they are incurred. The Department shall adopt rules relating to the contents of the written schedule and policy. Eligible agencies may be deemed compliant with this subsection (b).

(c) Every licensed child welfare agency providing adoption services must make full and fair disclosure to its clients, including biological parents and adoptive parents, of all circumstances material to the placement of a child for adoption. The Department shall adopt rules necessary for the implementation

and regulation of the requirements of this subsection (c).

(d) Every licensed child welfare agency providing adoption services shall meet minimum standards set forth by the Department concerning the taking or acknowledging of a consent prior to taking or acknowledging a consent from a prospective biological parent. The Department shall adopt rules concerning the minimum standards required by agencies under this Section.

(225 ILCS 10/7.5 new)

Sec. 7.5. Adoptive parent training program. Every licensed child welfare agency providing adoption services shall provide prospective adoptive parents with a training program that includes counseling and guidance for the purpose of promoting a successful adoption in conjunction with placing a child for adoption with the prospective adoptive parents and which must be completed to the satisfaction of the licensed child welfare agency prior to the finalization of the adoption. The training may be provided by an agent or independent contractor of the child welfare agency or by a Department-approved training individual or entity. The Department shall adopt rules concerning minimum hours, content, and agency documentation of the training and rules concerning the approval of individuals or entities conducting training under this Section. Eligible agencies may be deemed compliant with this Section.

(225 ILCS 10/7.6 new)

Sec. 7.6. Annual report. Every licensed child welfare agency providing adoption services shall file an annual report with the Department and with the Attorney General on forms and on a date prescribed by the Department. The annual reports for the preceding 2 years must be made available, upon request, to the public by the Department and every licensed agency and must be included on the website of the Department. Each licensed agency that maintains a website shall provide the reports on its website. The annual report shall include all of the following matters and all other matters required by the Department:

(1) a balance sheet and a statement of income and expenses for the year, certified by an independent public accountant; for purposes of this item (1), the audit report filed by an agency with the Department may be included in the annual report and, if so, shall be sufficient to comply with the requirement of this item (1);

(2) non-identifying information concerning the placements made by the agency during the year, consisting of the number of adoptive families in the process of obtaining a foster family license, the number of adoptive families that are licensed and awaiting placement, the number of biological parents that the agency is actively working with, the number of placements, and the number of adoptions initiated during the year and the status of each matter at the end of the year;

(3) any instance during the year in which the agency lost the right to provide adoption services in any State or country, had its license suspended for cause, or was the subject of other sanctions by any court, governmental agency, or governmental regulatory body relating to the provision of adoption services;

(4) any actions related to licensure that were initiated against the agency during the year by a licensing or accrediting body;

(5) any pending investigations by federal or State authorities;

(6) any criminal charges, child abuse charges, malpractice complaints, or lawsuits against the agency or any of its employees, officers, or directors related to the provision of adoption services and the basis or disposition of the actions;

(7) any instance in the year where the agency was found guilty of, or pled guilty to, any criminal or civil or administrative violation under federal, State, or foreign law that relates to the provision of adoption services;

(8) any instance in the year where any employee, officer, or director of the agency was found guilty of any crime or was determined to have violated a civil law or administrative rule under federal, State, or foreign law relating to the provision of adoption services; and

(9) any civil or administrative proceeding instituted by the agency during the year and relating to adoption services, excluding uncontested adoption proceedings and proceedings filed pursuant to Section 12a of the Adoption Act.

Failure to disclose information required under this Section may result in the suspension of the agency's license for a period of 90 days. Subsequent violations may result in revocation of the license.

Information disclosed in accordance with this Section shall be subject to the applicable confidentiality requirements of this Act and the Adoption Act.

(225 ILCS 10/7.7 new)

Sec. 7.7. Certain waivers prohibited. Licensed child welfare agencies providing adoption services shall not require biological or adoptive parents to sign any document that purports to waive claims against an agency for intentional or reckless acts or omissions or for gross negligence. Nothing in this Section shall require an agency to assume risks that are not within the reasonable control of the agency.



(225 ILCS 10/7.8 new)

Sec. 7.8. Preferential treatment in child placement prohibited. No licensed child welfare agency providing adoption services may give preferential treatment to its board members, contributors, volunteers, employees, agents, consultants, or independent contractors or to their relatives with respect to the placement of a child or any matters relating to adoption services. The Department shall define "preferential treatment" by rule and shall adopt any rules necessary to implement this Section. Eligible agencies may be deemed compliant with this Section.

(225 ILCS 10/7.9 new)

Sec. 7.9. Excessive fees in adoption services prohibited. Adoption services fees must be based on the costs associated with service delivery, and clients may be charged fees only for services provided. The Department shall define "excessive fees" by rule and shall adopt any rules necessary to implement this Section. Eligible agencies may be deemed compliant with this Section.

(225 ILCS 10/8) (from Ch. 23, par. 2218)

Sec. 8. The Department may revoke or refuse to renew the license of any child care facility or child welfare agency or refuse to issue full license to the holder of a permit should the licensee or holder of a permit:

- (1) fail to maintain standards prescribed and published by the Department;
- (2) violate any of the provisions of the license issued;
- (3) furnish or make any misleading or any false statement or report to the Department;
- (4) refuse to submit to the Department any reports or refuse to make available to the Department any records required by the Department in making investigation of the facility for licensing purposes;
- (5) fail or refuse to submit to an investigation by the Department;
- (6) fail or refuse to admit authorized representatives of the Department at any reasonable time for the purpose of investigation;
- (7) fail to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by the Department, or as otherwise required by any law, regulation or ordinance applicable to the location of such facility;
- (8) refuse to display its license or permit;
- (9) be the subject of an indicated report under Section 3 of the Abused and Neglected Child Reporting Act or fail to discharge or sever affiliation with the child care facility of an employee or volunteer at the facility with direct contact with children who is the subject of an indicated report under Section 3 of that Act;
- (10) fail to comply with the provisions of Section 7.1;
- (11) fail to exercise reasonable care in the hiring, training and supervision of facility personnel;
- (12) fail to report suspected abuse or neglect of children within the facility, as required by the Abused and Neglected Child Reporting Act;
- (13) fail to comply with Section 5.1 or 5.2 of this Act; or
- (14) be identified in an investigation by the Department as an addict or alcoholic, as defined in the Alcoholism and Other Drug Abuse and Dependency Act, or be a person whom the Department knows has abused alcohol or drugs, and has not successfully participated in treatment, self-help groups or other suitable activities, and the Department determines that because of such abuse the licensee, holder of the permit, or any other person directly responsible for the care and welfare of the children served, does not comply with standards relating to character, suitability or other qualifications established under Section 7 of this Act.

(Source: P.A. 91-357, eff. 7-29-99; 91-413, eff. 1-1-00.)

(225 ILCS 10/8.3 new)

Sec. 8.3. Tax exempt agency. The Department shall revoke or refuse to renew the license of any child welfare agency providing adoption services that is not (i) officially recognized by the United States Internal Revenue Service as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law) and (ii) in compliance with all of the standards necessary to maintain its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law). The Department shall grant a grace period of 24 months from the effective date of this amendatory Act of the 94th General Assembly for existing child welfare agencies providing adoption services to obtain 501(c)(3) status. The Department shall permit an existing child welfare agency that converts from its current structure in order to be recognized as a 501(c)(3) organization as required by this Section to either retain its current license or transfer its current license to a newly formed entity, if the creation of a new entity is required in order to comply with this Section, provided that the child welfare agency demonstrates that it continues to meet all other licensing requirements and that the principal officers and directors and programs of the

converted child welfare agency or newly organized child welfare agency are substantially the same as the original. The Department shall have the sole discretion to grant a one year extension to any agency unable to obtain 501(c)(3) status within the timeframe specified in this Section, provided that such agency has filed an application for 501(c)(3) status with the Internal Revenue Service within the 2-year timeframe specified in this Section.

(225 ILCS 10/8.4 new)

Sec. 8.4. Cessation or dissolution of an agency. In the event that a licensed child welfare agency ceases to exist or dissolves its corporate entity as an agency, and in so doing ceases to provide adoption services as defined in this Act, all records pertaining to adoption services, as that term is defined in Section 2.24 of this Act, shall be forwarded to another licensed child welfare agency with notice to the Department or to the Department within 30 days after such cessation or dissolution. This Section shall be interpreted in a manner consistent with rules adopted by the Department governing child welfare agencies.

(225 ILCS 10/9.1a new)

Sec. 9.1a. Complaint registry.

(a) The Department shall establish a complaint registry to assist in the monitoring of licensed child welfare agencies providing adoption services, which shall record and track the resolution and disposition of substantiated licensing violations.

(b) The Department shall establish and maintain a statewide toll-free telephone number and post information on its website where the public can access information contained in the complaint registry, as it pertains to the past history and record of any licensed child welfare agency providing adoption services. This information shall include, but shall not be limited to, Department substantiated licensing violations against a child welfare agency providing adoption services and Department findings of any license violations against a child welfare agency providing adoption services.

(c) Information disclosed in accordance with this Section shall be subject to the applicable confidentiality requirements of this Act and the Adoption Act.

(225 ILCS 10/9.1b new)

Sec. 9.1b. Complaint procedures. All child welfare agencies providing adoption services shall be required by the Department to have complaint policies and procedures that shall be provided in writing to their prospective clients, including biological parents, adoptive parents, and adoptees that they have served, at the earliest time possible, and, in the case of biological and adoptive parents, prior to placement or prior to entering into any written contract with the clients. These complaint procedures must be filed with the Department within 6 months after the effective date of this amendatory Act of the 94th General Assembly. Failure to comply with this Section may result in the suspension of licensure for a period of 90 days. Subsequent violations may result in licensure revocation. The Department shall adopt rules that describe the complaint procedures required by each agency. These rules shall include without limitation prompt complaint response time, recording of the complaints, prohibition of agency retaliation against the person making the complaint, and agency reporting of all complaints to the Department in a timely manner. Any agency that maintains a website shall post the prescribed complaint procedures and its license number, as well as the statewide toll-free complaint registry telephone number, on its website.

(225 ILCS 10/11) (from Ch. 23, par. 2221)

Sec. 11. Whenever the Department is advised, or has reason to believe, that any person, group of persons or corporation is operating a child welfare agency or a child care facility without a license or permit, it shall make an investigation to ascertain the facts. If the Department is denied access, it shall request intervention of local, county or State law enforcement agencies to seek an appropriate court order or warrant to examine the premises. A person or entity preventing the Department from carrying out its duties under this Section shall be guilty of a violation of this Act and shall be subject to such penalties related thereto. If it finds that the child welfare agency or child care facility is being, or has been operated without a license or permit, it shall report the results of its investigation to the Attorney General, and to the appropriate State's Attorney for investigation and, if appropriate, prosecution.

Operating a child welfare agency or child care facility without a license constitutes a Class A misdemeanor, followed by a business offense, if the operator continues to operate the facility and no effort is made to obtain a license. The business offense fine shall not exceed \$10,000 and each day of a violation is a separate offense.

(Source: P.A. 85-215.)

(225 ILCS 10/11.1) (from Ch. 23, par. 2221.1)

Sec. 11.1. Referrals to law enforcement.

(a) If the Department has reasonable cause to believe ~~Upon request of the Director, the Attorney~~

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~~General or the State's Attorney of the county in which the violation occurred, shall initiate injunction proceedings whenever it appears that any person, group of persons, or corporation, agency, association, organization, institution, center, or group is engaged or about to engage in any acts or practices that which constitute or will constitute a violation of this Act, the Department shall inform the Attorney General or the State's Attorney of the appropriate county, who may initiate the appropriate civil or criminal proceedings or any rule or regulation prescribed under authority thereof. Upon a proper showing, any circuit court may enter a permanent or preliminary injunction or temporary restraining order without bond to enforce this Act or any rule or regulation prescribed thereunder in addition to the penalties and other remedies provided in this Act.~~

(b) If the Department has reasonable cause to believe that any person, group of persons, corporation, agency, association, organization, institution, center, or group is engaged or is about to engage in any act or practice that constitutes or may constitute a violation of any rule adopted under the authority of this Act, the Department may inform the Attorney General or the State's Attorney of the appropriate county, who may initiate the appropriate civil or criminal proceedings. Upon a proper showing, any circuit court may enter a permanent or preliminary injunction or temporary restraining order without bond to enforce this Act or any rule prescribed under this Act, in addition to the penalties and other remedies provided in this Act.

(Source: P.A. 84-548.)

(225 ILCS 10/12) (from Ch. 23, par. 2222)

Sec. 12. Advertisements.

(a) In this Section, "advertise" means communication by any public medium originating or distributed in this State, including, but not limited to, newspapers, periodicals, telephone book listings, outdoor advertising signs, radio, or television.

(b) A child care facility or child welfare agency licensed or operating under a permit issued by the Department may publish advertisements for the services that the facility is specifically licensed or issued a permit under this Act to provide. A person, group of persons, agency, association, organization, corporation, institution, center, or group who advertises or causes to be published any advertisement offering, soliciting, or promising to perform adoption services as defined in Section 2.24 of this Act is guilty of a Class A misdemeanor and shall be subject to a fine not to exceed \$10,000 or 9 months imprisonment for each advertisement, unless that person, group of persons, agency, association, organization, corporation, institution, center, or group is (i) licensed or operating under a permit issued by the Department as a child care facility or child welfare agency, (ii) a biological parent or a prospective adoptive parent acting on his or her own behalf, or (iii) a licensed attorney advertising his or her availability to provide legal services relating to adoption, as permitted by law.

(c) Every advertisement published after the effective date of this amendatory Act of the 94th General Assembly shall include the Department-issued license number of the facility or agency.

(d) Any licensed child welfare agency providing adoption services that, after the effective date of this amendatory Act of the 94th General Assembly, causes to be published an advertisement containing reckless or intentional misrepresentations concerning adoption services or circumstances material to the placement of a child for adoption is guilty of a Class A misdemeanor and is subject to a fine not to exceed \$10,000 or 9 months imprisonment for each advertisement.

(e) An out-of-state agency that is not licensed in Illinois and that has a written interagency agreement with one or more Illinois licensed child welfare agencies may advertise under this Section, provided that (i) the out-of-state agency must be officially recognized by the United States Internal Revenue Service as a tax-exempt organization under 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law), (ii) the out-of-state agency provides only international adoption services and is covered by the Intercountry Adoption Act of 2000, (iii) the out-of-state agency displays, in the advertisement, the license number of at least one of the Illinois licensed child welfare agencies with which it has a written agreement, and (iv) the advertisements pertain only to international adoption services. Subsection (d) of this Section shall apply to any out-of-state agencies described in this subsection (e).

(f) An advertiser, publisher, or broadcaster, including, but not limited to, newspapers, periodicals, telephone book publishers, outdoor advertising signs, radio stations, or television stations, who knowingly or recklessly advertises or publishes any advertisement offering, soliciting, or promising to perform adoption services, as defined in Section 2.24 of this Act, on behalf of a person, group of persons, agency, association, organization, corporation, institution, center, or group, not authorized to advertise under subsection (b) or subsection (e) of this Section, is guilty of a Class A misdemeanor and is subject to a fine not to exceed \$10,000 or 9 months imprisonment for each advertisement.

(g) The Department shall maintain a website listing child welfare agencies licensed by the Department

that provide adoption services and other general information for biological parents and adoptive parents. The website shall include, but not be limited to, agency addresses, phone numbers, e-mail addresses, website addresses, annual reports as referenced in Section 7.6 of this Act, agency license numbers, the Birth Parent Bill of Rights, the Adoptive Parents Bill of Rights, and the Department's complaint registry established under Section 9.1a of this Act. The Department shall adopt any rules necessary to implement this Section. A child care facility licensed or operating under a permit issued by the Department may publish advertisements of the services for which it is specifically licensed or issued a permit under this Act. No person, unless licensed or holding a permit as a child care facility, may cause to be published any advertisement soliciting a child or children for care or placement or offering a child or children for care or placement.

(Source: P.A. 76-63.)

(225 ILCS 10/14.6 new)

Sec. 14.6. Agency payment of salaries or other compensation.

(a) A licensed child welfare agency may pay salaries or other compensation to its officers, employees, agents, contractors, or any other persons acting on its behalf for providing adoption services, provided that all of the following limitations apply:

(1) The fees, wages, salaries, or other compensation of any description paid to the officers, employees, contractors, or any other person acting on behalf of a child welfare agency providing adoption services shall not be unreasonably high in relation to the services actually rendered. Every form of compensation shall be taken into account in determining whether fees, wages, salaries, or compensation are unreasonably high, including, but not limited to, salary, bonuses, deferred and non-cash compensation, retirement funds, medical and liability insurance, loans, and other benefits such as the use, purchase, or lease of vehicles, expense accounts, and food, housing, and clothing allowances.

(2) Any earnings, if applicable, or compensation paid to the child welfare agency's directors, stockholders, or members of its governing body shall not be unreasonably high in relation to the services rendered.

(3) Persons providing adoption services for a child welfare agency may be compensated only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis.

(b) The Department may adopt rules setting forth the criteria to determine what constitutes unreasonably high fees and compensation as those terms are used in this Section. In determining the reasonableness of fees, wages, salaries, and compensation under paragraphs (1) and (2) of subsection (a) of this Section, the Department shall take into account the location, number, and qualifications of staff, workload requirements, budget, and size of the agency or person and available norms for compensation within the adoption community. Every licensed child welfare agency providing adoption services shall provide the Department and the Attorney General with a report, on an annual basis, providing a description of the fees, wages, salaries and other compensation described in paragraphs (1), (2), and (3) of this Section. Nothing in the Adoption Compensation Prohibition Act shall be construed to prevent a child welfare agency from charging fees or the payment of salaries and compensation as limited in this Section and any applicable Section of this Act or the Adoption Act.

(c) This Section does not apply to international adoption services performed by those child welfare agencies governed by the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

(d) Eligible agencies may be deemed compliant with this Section.

(225 ILCS 10/14.7 new)

Sec. 14.7. Payments to biological parents.

(a) Payment of reasonable living expenses by a child welfare agency shall not obligate the biological parents to place the child for adoption. In the event that the biological parents choose not to place the child for adoption, the child welfare agency shall have no right to seek reimbursement from the biological parents, or from any relative of the biological parents, of moneys paid to, or on behalf of, the biological parents, except as provided in subsection (b) of this Section.

(b) Notwithstanding subsection (a) of this Section, a child welfare agency may seek reimbursement of reasonable living expenses from a person who receives such payments only if the person who accepts payment of reasonable living expenses before the child's birth, as described in subsection (a) of this Section, knows that the person on whose behalf they are accepting payment is not pregnant at the time of the receipt of such payments or the person receives reimbursement for reasonable living expenses simultaneously from more than one child welfare agency without the agencies' knowledge.

Section 10. The Adoption Compensation Prohibition Act is amended by changing Sections 1, 2, 3, 4, and 4.1 and by adding Section 4.9 as follows:

[May 10, 2005]

(720 ILCS 525/1) (from Ch. 40, par. 1701)

Sec. 1. No person and no agency, association, corporation, institution, society, or other organization, except a child welfare agency as defined by the Child Care Act of 1969, as now or hereafter amended, shall request, receive or accept any compensation or thing of value, directly or indirectly, for providing adoption services, as defined in Section 2.24 of the Child Care Act of 1969 ~~placing out of a child.~~  
(Source: P.A. 86-820.)

(720 ILCS 525/2) (from Ch. 40, par. 1702)

Sec. 2. No person shall pay or give any compensation or thing of value, directly or indirectly, for providing adoption services, as defined in Section 2.24 of the Child Care Act of 1969, including placing out of a child to any person or to any agency, association, corporation, institution, society, or other organization except a child welfare agency as defined by the Child Care Act of 1969, as now or hereafter amended.

(Source: P.A. 86-820.)

(720 ILCS 525/3) (from Ch. 40, par. 1703)

Sec. 3. Definitions. As used in this Act: ~~the term~~  
"Placing ~~placing~~ out" means to arrange for the free care or placement of a child in a family other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care.

"Adoption services" has the meaning given that term in the Child Care Act of 1969.

(Source: Laws 1955, p. 1881.)

(720 ILCS 525/4) (from Ch. 40, par. 1704)

Sec. 4. The provisions of this Act shall not be construed to prevent the payment of salaries or other compensation by a licensed child welfare agency providing adoption services, as that term is defined by the Child Care Act of 1969, as now or hereafter amended, to the officers, ~~or~~ employees, agents, contractors, or any other persons acting on behalf of the child welfare agency, provided that such salaries and compensation are consistent with subsection (a) of Section 14.5 of the Child Care Act of 1969.

The provisions of this Act shall not thereof, nor shall it be construed to prevent the payment by a person with whom a child has been placed for adoption ~~out~~ of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child, if such payment is made to the physician or hospital who or which rendered the services or to the biological natural mother of the child or to prevent the receipt of such payment by such physician, hospital, or mother.

(Source: P.A. 86-820.)

(720 ILCS 525/4.1) (from Ch. 40, par. 1704.1)

(Text of Section after amendment by P.A. 93-1063)

Sec. 4.1. Payment of certain expenses.

(a) A person or persons who have filed or intend to file a petition to adopt a child under the Adoption Act shall be permitted to pay the reasonable living expenses of the biological parents of the child sought to be adopted, in addition to those expenses set forth in Section 4, only in accordance with the provisions of this Section.

"Reasonable living expenses" means those expenses related to activities of daily living and meeting basic needs, including, but not limited to, the reasonable costs of lodging, food, and clothing for the biological parents during the period of the biological mother's pregnancy and for no more than 120 days prior to the biological mother's expected date of delivery and for no more than 60 ~~30~~ days after the birth of the child. The term does not include expenses for lost wages, gifts, educational expenses, or other similar expenses of the biological parents.

(b) The petitioners may seek leave of the court to pay the reasonable living expenses of the biological parents. They shall be permitted to pay the reasonable living expenses of the biological parents only upon prior order of the circuit court where the petition for adoption will be filed, or if the petition for adoption has been filed in the circuit court where the petition is pending.

(c) Payments under this Section shall be permitted only in those circumstances where there is a demonstrated need for the payment of such expenses to protect the health of the biological parents or the health of the child sought to be adopted.

(d) Payment of their reasonable living expenses, as provided in this Section, shall not obligate the biological parents to place the child for adoption. In the event the biological parents choose not to place the child for adoption, the petitioners shall have no right to seek reimbursement from the biological parents, or from any relative or associate of the biological parents, of moneys paid to, or on behalf of, the biological parents pursuant to a court order under this Section.

(d-5) No person or entity shall offer, provide, or co-sign a loan or any other credit accommodation, directly or indirectly, with a biological parent or a relative or associate of a biological parent based on

the contingency of a surrender or placement of a child for adoption.

(e) Within 14 days after the completion of all payments for reasonable living expenses of the biological parents under this Section, the petitioners shall present a final accounting of all those expenses to the court. The accounting shall include vouchers for all moneys expended, copies of all checks written, and receipts for all cash payments. The accounting shall also include the verified statements of the petitioners, each attorney of record, and the biological parents or parents to whom or on whose behalf the payments were made attesting to the accuracy of the accounting.

(f) If the placement of a child for adoption is made in accordance with the Interstate Compact on the Placement of Children, and if the sending state permits the payment of any expenses of biological parents that are not permitted under this Act, then the payment of those expenses shall not be a violation of this Act. In that event, the petitioners shall file an accounting of all payments of the expenses of the biological parent or parents with the court in which the petition for adoption is filed or is to be filed. The accounting shall include a copy of the statutory provisions of the sending state that permit payments in addition to those permitted by this Act and a copy of all orders entered in the sending state that relate to expenses of the biological parents paid by the petitioners in the sending state.

(g) The petitioners shall be permitted to pay the reasonable attorney's fees of the biological parents' attorney in connection with proceedings under this Act or in connection with proceedings for the adoption of the child. The attorney's fees shall be paid only after a petition seeking leave to pay those fees is filed with the court in which the adoption proceeding is filed or to be filed. The court shall review the petition for leave to pay attorney's fees, and if the court determines that the fees requested are reasonable, the court shall permit the petitioners to pay them. If the court determines that the fees requested are not reasonable, the court shall determine and set the reasonable attorney's fees of the biological parents' attorney which may be paid by the petitioners.

(h) The court may appoint a guardian ad litem for an unborn child to represent the interests of the child in proceedings under this Section.

(i) The provisions of this Section apply to a person who has filed or intends to file a petition to adopt a child under the Adoption Act. This Section does not apply to a licensed child welfare agency, as that term is defined in the Child Care Act of 1969, whose payments are governed by the Child Care Act of 1969 and the Department rules adopted thereunder.

(Source: P.A. 93-1063, eff. 6-1-05.)

(720 ILCS 525/4.9 new)

Sec. 4.9. Injunctive relief.

(a) Whenever it appears that any person, agency, association, corporation, institution, society, or other organization is engaged or about to engage in any acts or practices that constitute or will constitute a violation of this Act, the Department shall inform the Attorney General and the State's Attorney of the appropriate county. Under such circumstances, the Attorney General or the State's Attorney may initiate injunction proceedings. Upon a proper showing, any circuit court may enter a permanent or preliminary injunction or temporary restraining order without bond to enforce this Act or any rule adopted under this Act in addition to any other penalties and other remedies provided in this Act.

(b) Whenever it appears that any person, agency, association, corporation, institution, society, or other organization is engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any rule adopted under the authority of this Act, the Department may inform the Attorney General and the State's Attorney of the appropriate county. Under such circumstances, the Attorney General or the State's Attorney may initiate injunction proceedings. Upon a proper showing, any circuit court may enter a permanent or preliminary injunction or a temporary restraining order without bond to enforce this Act or any rule adopted under this Act, in addition to any other penalties and remedies provided in this Act.

Section 15. The Adoption Act is amended by changing Sections 4.1 and 21 as follows:

(750 ILCS 50/4.1) (from Ch. 40, par. 1506)

Sec. 4.1. Except for children placed with relatives by the Department of Children and Family Services pursuant to subsection (b) of Section 7 of the Children and Family Services Act, placements under this Act shall comply with the Child Care Act of 1969 and the Interstate Compact on the Placement of Children. Placements of children born outside the United States or a territory thereof shall comply with rules promulgated by the United States Department of Immigration and Naturalization.

Rules promulgated by the Department of Children and Family Services shall include but not be limited to the following:

(a) Any agency providing adoption services as defined in Section 2.24 of the Child Care Act of 1969 which places such children for adoption in this State:

[May 10, 2005]

(i) Shall be licensed in this State as a child welfare agency as defined in Section 2.08 of the Child Care Act of 1969; or

(ii) Shall be licensed as a child placement agency in a state which is a party to the Interstate Compact on the Placement of Children and shall be approved by the Department to place children into Illinois in accordance with subsection (a-5) of this Section; or

(iii) Shall be licensed as a child placement agency in a country other than the United States or, if located in such a country but not so licensed, shall provide information such as a license or court document which authorizes that agency to place children for adoption and to establish that such agency has legal authority to place children for adoption; or

(iv) Shall be a child placement agency which is so licensed in a non-compact state and shall be approved by the Department to place children into Illinois in accordance with subsection (a-5) of this Section, if

such agency first files with the Department of Children and Family Services a bond with surety in the amount of \$5,000 for each such child to ensure that such child shall not become a public charge upon this State. Such bond shall remain in effect until a judgment for adoption is entered with respect to such child pursuant to this Act. The Department of Children and Family Services may accept, in lieu of such bond, a written agreement with such agency which provides that such agency shall be liable for all costs associated with the placement of such child in the event a ~~judgment~~ judgement of adoption is not entered, upon such terms and conditions as the Department deems appropriate.

The rules shall also provide that any agency that places children for adoption in this State may not, in any policy or practice relating to the placement of children for adoption, discriminate against any child or prospective adoptive parent on the basis of race.

(a-5) Out-of-state private placing agencies that seek to place children into Illinois for the purpose of foster care or adoption shall provide all of the following to the Department:

(i) A copy of the agency's current license or other form of authorization from the approving authority in the agency's state. If no such license or authorization is issued, the agency must provide a reference statement from the approving authority stating the agency is authorized to place children in foster care or adoption or both in its jurisdiction.

(ii) A description of the program, including home studies, placements, and supervisions that the child placing agency conducts within its geographical area, and, if applicable, adoptive placements and the finalization of adoptions. The child placing agency must accept continued responsibility for placement planning and replacement if the placement fails.

(iii) Notification to the Department of any significant child placing agency changes after approval.

(iv) Any other information the Department may require.

If the adoption is finalized prior to bringing or sending the child to Illinois, Department approval of the out-of-state child placing agency involved is not required under this Section, nor is compliance with the Interstate Compact on the Placement of Children.

(b) As an alternative to requiring the bond provided for in paragraph (a)(iv) of this Section, the Department of Children and Family Services may require the filing of such a bond by the individual or individuals seeking to adopt such a child through placement of such child by a child placement agency located in a state which is not a party to the Interstate Compact on the Placement of Children.

(c) In the case of any foreign-born child brought to the United States for adoption in this State, the following preadoption requirements shall be met:

(1) Documentation that the child is legally free for adoption prior to entry into the United States shall be submitted.

(2) A medical report on the child, by authorized medical personnel in the country of the child's origin, shall be provided when such personnel are available.

(3) Verification that the adoptive family has been licensed as a foster family home pursuant to the Child Care Act of 1969, as now or hereafter amended, shall be provided.

(4) A valid home study conducted by a licensed child welfare agency that complies with guidelines established by the United States Immigration and Naturalization Service at 8 CFR 204.4(d)(2)(i), as now or hereafter amended, shall be submitted. A home study is considered valid if it contains:

(i) A factual evaluation of the financial, physical, mental and moral capabilities of the prospective parent or parents to rear and educate the child properly.

(ii) A detailed description of the living accommodations where the prospective parent or parents currently reside.

(iii) A detailed description of the living accommodations in the United States where the child will reside, if known.

(iv) A statement or attachment recommending the proposed adoption signed by an official of the child welfare agency which has conducted the home study.

(5) The placing agency located in a non-compact state or a family desiring to adopt through an authorized placement party in a non-compact state or a foreign country shall file with the Department of Children and Family Services a bond with surety in the amount of \$5,000 as protection that a foreign-born child accepted for care or supervision not become a public charge upon the State of Illinois.

(6) In lieu of the \$5,000 bond, the placement agency may sign a binding agreement with the Department of Children and Family Services to assume full liability for all placements should, for any reason, the adoption be disrupted or not be completed, including financial and planning responsibility until the child is either returned to the country of its origin or placed with a new adoptive family in the United States and that adoption is finalized.

(7) Compliance with the requirements of the Interstate Compact on the Placement of Children, when applicable, shall be demonstrated.

(8) When a child is adopted in a foreign country and a final, complete and valid Order of Adoption is issued in that country, as determined by both the United States Department of State and the United States Department of Justice, this State shall not impose any additional preadoption requirements. The adoptive family, however, must comply with applicable requirements of the United States Department of Immigration and Naturalization as provided in 8 CFR 204.4 (d)(2)(ii), as now or hereafter amended.

(d) The Department of Children and Family Services shall maintain the office of Intercountry Adoption Coordinator, shall maintain and protect the rights of families and children participating in adoption of foreign born children, and shall develop ongoing programs of support and services to such families and children. The Intercountry Adoption Coordinator shall determine that all preadoption requirements have been met and report such information to the Department of Immigration and Naturalization.

(Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-626, eff. 8-9-96.)

(750 ILCS 50/21) (from Ch. 40, par. 1526)

Sec. 21. Compensation for placing of children prohibited.

No person, agency, association, corporation, institution, society or other organization, except a child welfare agency as defined by the "Child Care Act", approved July 10, 1957, as now or hereafter amended, shall receive or accept, or pay or give any compensation or thing of value, directly or indirectly, for providing adoption services, as that term is defined in the Child Care Act of 1969, including placing out of a child as is more specifically provided in "An Act to prevent the payment or receipt of compensation for placing out children for adoption or for the purpose of providing care", approved July 14, 1955, as now or hereafter amended.

(Source: Laws, 1959, p. 1269.)

Section 95. No acceleration or delay. Where this Act makes changes in a statute that is represented in this Act by text that is not yet or no longer in effect (for example, a Section represented by multiple versions), the use of that text does not accelerate or delay the taking effect of (i) the changes made by this Act or (ii) provisions derived from any other Public Act.

Section 99. Effective date. This Act takes effect upon becoming law."

### **AMENDMENT NO. 3 TO HOUSE BILL 3628**

AMENDMENT NO. 3. Amend House Bill 3628, AS AMENDED, in Section 5, by replacing Sec. 8.3 with the following:

"(225 ILCS 10/8.3 new)

Sec. 8.3. Tax exempt agency.

(a) The Department shall revoke or refuse to renew the license of any child welfare agency providing adoption services that is not (i) officially recognized by the United States Internal Revenue Service as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law) and (ii) in compliance with all of the standards necessary to maintain its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or any successor provision of federal tax law).

(b) The Department shall grant a grace period of 24 months from the effective date of this amendatory Act of the 94th General Assembly for existing child welfare agencies providing adoption services to obtain 501(c)(3) status. The Department shall permit an existing child welfare agency that converts from

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its current structure in order to be recognized as a 501(c)(3) organization as required by this Section to either retain its current license or transfer its current license to a newly formed entity, if the creation of a new entity is required in order to comply with this Section, provided that the child welfare agency demonstrates that it continues to meet all other licensing requirements and that the principal officers and directors and programs of the converted child welfare agency or newly organized child welfare agency are substantially the same as the original. The Department shall have the sole discretion to grant a one year extension to any agency unable to obtain 501(c)(3) status within the timeframe specified in this Section, provided that such agency has filed an application for 501(c)(3) status with the Internal Revenue Service within the 2-year timeframe specified in this Section.

(c) Nothing in this Section shall prohibit a licensed child welfare agency from using the services of any person, group of persons, agency, association, organization, corporation, institution, center, or group as an independent contractor to perform services on behalf of the licensed agency, provided that the licensed agency has a written agreement with the independent contractor specifying the terms of remuneration, the services to be performed, the personnel performing those services, and the qualifications of the personnel, in addition to any other information or requirements the Department may specify by rule. The licensed agency is not exempt, by reason of the use of the contractor, from compliance with all of the provisions of this Act. The Department has the authority to disapprove the use of any contractor if the Department is not satisfied with the agency's agreement with the contractor, the personnel of the contractor who are performing the services, or the qualifications of the personnel or if the contractor violates any provision of this Act or the Adoption Act."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator J. Sullivan, **House Bill No. 3646** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Roskam, **House Bill No. 3648** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Judiciary, adopted and ordered printed:

#### **AMENDMENT NO. 1 TO HOUSE BILL 3648**

AMENDMENT NO. 1. Amend House Bill 3648 by replacing everything after the enacting clause with the following:

"Section 5. The Unified Code of Corrections is amended by changing Sections 5-5-3.2 and 5-6-1 as follows:

(730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

Sec. 5-5-3.2. Factors in Aggravation.

(a) The following factors shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more severe sentence under Section 5-8-1:

- (1) the defendant's conduct caused or threatened serious harm;
- (2) the defendant received compensation for committing the offense;
- (3) the defendant has a history of prior delinquency or criminal activity;
- (4) the defendant, by the duties of his office or by his position, was obliged to prevent the particular offense committed or to bring the offenders committing it to justice;
- (5) the defendant held public office at the time of the offense, and the offense related to the conduct of that office;
- (6) the defendant utilized his professional reputation or position in the community to commit the offense, or to afford him an easier means of committing it;
- (7) the sentence is necessary to deter others from committing the same crime;
- (8) the defendant committed the offense against a person 60 years of age or older or such person's property;
- (9) the defendant committed the offense against a person who is physically handicapped or such person's property;

(10) by reason of another individual's actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin, the defendant committed the offense against (i) the person or property of that individual; (ii) the person or property of a person who has an association with, is married to, or has a friendship with the other

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individual; or (iii) the person or property of a relative (by blood or marriage) of a person described in clause (i) or (ii). For the purposes of this Section, "sexual orientation" means heterosexuality, homosexuality, or bisexuality;

(11) the offense took place in a place of worship or on the grounds of a place of worship, immediately prior to, during or immediately following worship services. For purposes of this subparagraph, "place of worship" shall mean any church, synagogue or other building, structure or place used primarily for religious worship;

(12) the defendant was convicted of a felony committed while he was released on bail or his own recognizance pending trial for a prior felony and was convicted of such prior felony, or the defendant was convicted of a felony committed while he was serving a period of probation, conditional discharge, or mandatory supervised release under subsection (d) of Section 5-8-1 for a prior felony;

(13) the defendant committed or attempted to commit a felony while he was wearing a bulletproof vest. For the purposes of this paragraph (13), a bulletproof vest is any device which is designed for the purpose of protecting the wearer from bullets, shot or other lethal projectiles;

(14) the defendant held a position of trust or supervision such as, but not limited to, family member as defined in Section 12-12 of the Criminal Code of 1961, teacher, scout leader, baby sitter, or day care worker, in relation to a victim under 18 years of age, and the defendant committed an offense in violation of Section 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961 against that victim;

(15) the defendant committed an offense related to the activities of an organized gang. For the purposes of this factor, "organized gang" has the meaning ascribed to it in Section 10 of the Streetgang Terrorism Omnibus Prevention Act;

(16) the defendant committed an offense in violation of one of the following Sections while in a school, regardless of the time of day or time of year; on any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity; on the real property of a school; or on a public way within 1,000 feet of the real property comprising any school: Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or 33A-2 of the Criminal Code of 1961;

(16.5) the defendant committed an offense in violation of one of the following Sections while in a day care center, regardless of the time of day or time of year; on the real property of a day care center, regardless of the time of day or time of year; or on a public way within 1,000 feet of the real property comprising any day care center, regardless of the time of day or time of year: Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or 33A-2 of the Criminal Code of 1961;

(17) the defendant committed the offense by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer. For the purpose of this Section, "community policing volunteer" has the meaning ascribed to it in Section 2-3.5 of the Criminal Code of 1961;

(18) the defendant committed the offense in a nursing home or on the real property comprising a nursing home. For the purposes of this paragraph (18), "nursing home" means a skilled nursing or intermediate long term care facility that is subject to license by the Illinois Department of Public Health under the Nursing Home Care Act; ~~or~~

(19) the defendant was a federally licensed firearm dealer and was previously convicted of a violation of subsection (a) of Section 3 of the Firearm Owners Identification Card Act and has now committed either a felony violation of the Firearm Owners Identification Card Act or an act of armed violence while armed with a firearm; or -

(20) the defendant (i) committed the offense of reckless driving or aggravated reckless driving under Section 11-503 of the Illinois Vehicle Code and (ii) was operating a motor vehicle in excess of 20 miles per hour over the posted speed limit as provided in Article VI of Chapter 11 of the Illinois Vehicle Code.

For the purposes of this Section:

"School" is defined as a public or private elementary or secondary school, community college, college, or university.

"Day care center" means a public or private State certified and licensed day care center as defined in Section 2.09 of the Child Care Act of 1969 that displays a sign in plain view stating that the property is a day care center.

(b) The following factors may be considered by the court as reasons to impose an extended term

sentence under Section 5-8-2 upon any offender:

(1) When a defendant is convicted of any felony, after having been previously convicted in Illinois or any other jurisdiction of the same or similar class felony or greater class felony, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts; or

(2) When a defendant is convicted of any felony and the court finds that the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty; or

(3) When a defendant is convicted of voluntary manslaughter, second degree murder, involuntary manslaughter or reckless homicide in which the defendant has been convicted of causing the death of more than one individual; or

(4) When a defendant is convicted of any felony committed against:

(i) a person under 12 years of age at the time of the offense or such person's property;

(ii) a person 60 years of age or older at the time of the offense or such person's property; or

(iii) a person physically handicapped at the time of the offense or such person's property; or

(5) In the case of a defendant convicted of aggravated criminal sexual assault or criminal sexual assault, when the court finds that aggravated criminal sexual assault or criminal sexual assault was also committed on the same victim by one or more other individuals, and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime, and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective; or

(6) When a defendant is convicted of any felony and the offense involved any of the following types of specific misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal, or social group:

(i) the brutalizing or torturing of humans or animals;

(ii) the theft of human corpses;

(iii) the kidnapping of humans;

(iv) the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property; or

(v) ritualized abuse of a child; or

(7) When a defendant is convicted of first degree murder, after having been previously convicted in Illinois of any offense listed under paragraph (c)(2) of Section 5-5-3, when such conviction has occurred within 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts; or

(8) When a defendant is convicted of a felony other than conspiracy and the court finds that the felony was committed under an agreement with 2 or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership, and the court further finds that the felony committed was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang; or

(9) When a defendant is convicted of a felony violation of Section 24-1 of the Criminal Code of 1961 and the court finds that the defendant is a member of an organized gang; or

(10) When a defendant committed the offense using a firearm with a laser sight attached to it. For purposes of this paragraph (10), "laser sight" has the meaning ascribed to it in Section 24.6-5 of the Criminal Code of 1961; or

(11) When a defendant who was at least 17 years of age at the time of the commission of the offense is convicted of a felony and has been previously adjudicated a delinquent minor under the Juvenile Court Act of 1987 for an act that if committed by an adult would be a Class X or Class 1 felony when the conviction has occurred within 10 years after the previous adjudication, excluding time spent in custody; or

(12) When a defendant commits an offense involving the illegal manufacture of a controlled substance under Section 401 of the Illinois Controlled Substances Act or the illegal possession of explosives and an emergency response officer in the performance of his or her duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense. In this paragraph (12), "emergency" means a situation in which a person's life, health, or safety is in jeopardy; and "emergency response officer" means a peace officer, community policing volunteer, fireman, emergency medical technician-ambulance, emergency

medical technician-intermediate, emergency medical technician-paramedic, ambulance driver, other medical assistance or first aid personnel, or hospital emergency room personnel.

(b-1) For the purposes of this Section, "organized gang" has the meaning ascribed to it in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

(c) The court may impose an extended term sentence under Section 5-8-2 upon any offender who was convicted of aggravated criminal sexual assault or predatory criminal sexual assault of a child under subsection (a)(1) of Section 12-14.1 of the Criminal Code of 1961 where the victim was under 18 years of age at the time of the commission of the offense.

(d) The court may impose an extended term sentence under Section 5-8-2 upon any offender who was convicted of unlawful use of weapons under Section 24-1 of the Criminal Code of 1961 for possessing a weapon that is not readily distinguishable as one of the weapons enumerated in Section 24-1 of the Criminal Code of 1961.

(Source: P.A. 91-119, eff. 1-1-00; 91-120, eff. 7-15-99; 91-252, eff. 1-1-00; 91-267, eff. 1-1-00; 91-268, eff. 1-1-00; 91-357, eff. 7-29-99; 91-437, eff. 1-1-00; 91-696, eff. 4-13-00; 92-266, eff. 1-1-02.)

(730 ILCS 5/5-6-1) (from Ch. 38, par. 1005-6-1)

Sec. 5-6-1. Sentences of Probation and of Conditional Discharge and Disposition of Supervision. The General Assembly finds that in order to protect the public, the criminal justice system must compel compliance with the conditions of probation by responding to violations with swift, certain and fair punishments and intermediate sanctions. The Chief Judge of each circuit shall adopt a system of structured, intermediate sanctions for violations of the terms and conditions of a sentence of probation, conditional discharge or disposition of supervision.

(a) Except where specifically prohibited by other provisions of this Code, the court shall impose a sentence of probation or conditional discharge upon an offender unless, having regard to the nature and circumstance of the offense, and to the history, character and condition of the offender, the court is of the opinion that:

(1) his imprisonment or periodic imprisonment is necessary for the protection of the public; or

(2) probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice; or

(3) a combination of imprisonment with concurrent or consecutive probation when an offender has been admitted into a drug court program under Section 20 of the Drug Court Treatment Act is necessary for the protection of the public and for the rehabilitation of the offender.

The court shall impose as a condition of a sentence of probation, conditional discharge, or supervision, that the probation agency may invoke any sanction from the list of intermediate sanctions adopted by the chief judge of the circuit court for violations of the terms and conditions of the sentence of probation, conditional discharge, or supervision, subject to the provisions of Section 5-6-4 of this Act.

(b) The court may impose a sentence of conditional discharge for an offense if the court is of the opinion that neither a sentence of imprisonment nor of periodic imprisonment nor of probation supervision is appropriate.

(b-1) Subsections (a) and (b) of this Section do not apply to a defendant charged with a misdemeanor or felony under the Illinois Vehicle Code or reckless homicide under Section 9-3 of the Criminal Code of 1961 if the defendant within the past 12 months has been convicted of or pleaded guilty to a misdemeanor or felony under the Illinois Vehicle Code or reckless homicide under Section 9-3 of the Criminal Code of 1961.

(c) The court may, upon a plea of guilty or a stipulation by the defendant of the facts supporting the charge or a finding of guilt, defer further proceedings and the imposition of a sentence, and enter an order for supervision of the defendant, if the defendant is not charged with: (i) a Class A misdemeanor, as defined by the following provisions of the Criminal Code of 1961: Sections 12-3.2; 12-15; 26-5; 31-1; 31-6; 31-7; subsections (b) and (c) of Section 21-1; paragraph (1) through (5), (8), (10), and (11) of subsection (a) of Section 24-1; (ii) a Class A misdemeanor violation of Section 3.01, 3.03-1, or 4.01 of the Humane Care for Animals Act; or (iii) felony. If the defendant is not barred from receiving an order for supervision as provided in this subsection, the court may enter an order for supervision after considering the circumstances of the offense, and the history, character and condition of the offender, if the court is of the opinion that:

(1) the offender is not likely to commit further crimes;

(2) the defendant and the public would be best served if the defendant were not to receive a criminal record; and

(3) in the best interests of justice an order of supervision is more appropriate than a sentence otherwise permitted under this Code.

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(d) The provisions of paragraph (c) shall not apply to a defendant charged with violating Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance when the defendant has previously been:

- (1) convicted for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance or any similar law or ordinance of another state; or
- (2) assigned supervision for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance or any similar law or ordinance of another state; or
- (3) pleaded guilty to or stipulated to the facts supporting a charge or a finding of guilty to a violation of Section 11-503 of the Illinois Vehicle Code or a similar provision of a local ordinance or any similar law or ordinance of another state, and the plea or stipulation was the result of a plea agreement.

The court shall consider the statement of the prosecuting authority with regard to the standards set forth in this Section.

(e) The provisions of paragraph (c) shall not apply to a defendant charged with violating Section 16A-3 of the Criminal Code of 1961 if said defendant has within the last 5 years been:

- (1) convicted for a violation of Section 16A-3 of the Criminal Code of 1961; or
- (2) assigned supervision for a violation of Section 16A-3 of the Criminal Code of 1961.

The court shall consider the statement of the prosecuting authority with regard to the standards set forth in this Section.

(f) The provisions of paragraph (c) shall not apply to a defendant charged with violating Sections 15-111, 15-112, 15-301, paragraph (b) of Section 6-104, Section 11-605, or Section 11-1414 of the Illinois Vehicle Code or a similar provision of a local ordinance.

(g) Except as otherwise provided in paragraph (i) of this Section, the provisions of paragraph (c) shall not apply to a defendant charged with violating Section 3-707, 3-708, 3-710, or 5-401.3 of the Illinois Vehicle Code or a similar provision of a local ordinance if the defendant has within the last 5 years been:

- (1) convicted for a violation of Section 3-707, 3-708, 3-710, or 5-401.3 of the Illinois Vehicle Code or a similar provision of a local ordinance; or
- (2) assigned supervision for a violation of Section 3-707, 3-708, 3-710, or 5-401.3 of the Illinois Vehicle Code or a similar provision of a local ordinance.

The court shall consider the statement of the prosecuting authority with regard to the standards set forth in this Section.

(h) The provisions of paragraph (c) shall not apply to a defendant under the age of 21 years charged with violating a serious traffic offense as defined in Section 1-187.001 of the Illinois Vehicle Code:

- (1) unless the defendant, upon payment of the fines, penalties, and costs provided by law, agrees to attend and successfully complete a traffic safety program approved by the court under standards set by the Conference of Chief Circuit Judges. The accused shall be responsible for payment of any traffic safety program fees. If the accused fails to file a certificate of successful completion on or before the termination date of the supervision order, the supervision shall be summarily revoked and conviction entered. The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases when a defendant enters a guilty plea under this provision; or
- (2) if the defendant has previously been sentenced under the provisions of paragraph

(c) on or after January 1, 1998 for any serious traffic offense as defined in Section 1-187.001 of the Illinois Vehicle Code.

(i) The provisions of paragraph (c) shall not apply to a defendant charged with violating Section 3-707 of the Illinois Vehicle Code or a similar provision of a local ordinance if the defendant has been assigned supervision for a violation of Section 3-707 of the Illinois Vehicle Code or a similar provision of a local ordinance.

(j) The provisions of paragraph (c) shall not apply to a defendant charged with violating Section 6-303 of the Illinois Vehicle Code or a similar provision of a local ordinance when the revocation or suspension was for a violation of Section 11-501 or a similar provision of a local ordinance, a violation of Section 11-501.1 or paragraph (b) of Section 11-401 of the Illinois Vehicle Code, or a violation of Section 9-3 of the Criminal Code of 1961 if the defendant has within the last 10 years been:

- (1) convicted for a violation of Section 6-303 of the Illinois Vehicle Code or a similar provision of a local ordinance; or
- (2) assigned supervision for a violation of Section 6-303 of the Illinois Vehicle Code or a similar provision of a local ordinance.

(Source: P.A. 93-388, eff. 7-25-03; 93-1014, eff. 1-1-05)."

There being no further amendments, the bill, as amended, was ordered to a third reading.

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On motion of Senator Roskam, **House Bill No. 3651** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Lightford, **House Bill No. 3678** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Collins, **House Bill No. 3680** was taken up, read by title a second time and ordered to a third reading.

On motion of Garrett, **House Bill No. 3724** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Link, **House Bill No. 3738** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Martinez, **House Bill No. 3740** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Raoul, **House Bill No. 3742** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 3749** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Demuzio, **House Bill No. 3757** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hunter, **House Bill No. 3763** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Jacobs, **House Bill No. 3770** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator J. Sullivan, **House Bill No. 3785** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Crotty, **House Bill No. 3800** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Collins, **House Bill No. 3801** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Judiciary, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 3801**

AMENDMENT NO. 1. Amend House Bill 3801 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Medical School Applicant Criminal Background Check Act."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Raoul, **House Bill No. 3802** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Ronen, **House Bill No. 3812** having been printed, was taken up and read by title a second time.

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The following amendment was offered in the Committee on Health & Human Services, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 3812**

AMENDMENT NO. 1. Amend House Bill 3812 on page 1, between lines 3 and 4, by inserting the following:

"Section 2. The Mental Health and Developmental Disabilities Administrative Act is amended by adding Section 18.6 as follows:

(20 ILCS 1705/18.6 new)

Sec. 18.6. Recovery-oriented services and treatment. The Department shall research and determine requirements for the development and transformation to a recovery-oriented system for delivering State-funded and State-operated services to persons with mental illness. The Department may convene an inter-agency, inter-disciplinary task force of experts in the mental health field, including consumers of services, mental health professionals, providers of State-operated and community-based services, advisory boards and councils, and organizations representing consumers to assist in this determination.

For the purpose of this Section, "recovery" refers to the process by which people are able to live, work, learn, and participate fully in their communities. A recovery-oriented system provides services and treatments that are consumer and family centered and geared to give consumers real and meaningful choices about treatment options and providers. Care must focus on increasing consumers' ability to successfully cope with life's challenges, on facilitating recovery, and on building resilience, not just on managing symptoms

By January 1, 2006, the Department shall prepare and submit to the Governor and to the General Assembly a report of findings and recommendations to transform the current system of care for persons with mental illness to a recovery-oriented system including a common definition of terms, the requirements of a recovery-oriented system, including a comparison of this recovery-oriented system with the current system, identification of the similarities and differences between the systems in terms of the services provided, a description of the protocols for assessment, case planning, and service delivery, and a comparison of the costs of the systems."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Roskam, **House Bill No. 3816** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Maloney, **House Bill No. 3821** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Raoul, **House Bill No. 3822** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Wojcik, **House Bill No. 3831** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Link, **House Bill No. 3843** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Dahl, **House Bill No. 3850** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Hendon, **House Bill No. 3851** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator Pankau, **House Bill No. 4014** was taken up, read by title a second time and ordered to a third reading.

On motion of Senator J. Sullivan, **House Bill No. 4020** was taken up, read by title a second time and ordered to a third reading.

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On motion of Senator Demuzio, **House Bill No. 4023** having been printed, was taken up and read by title a second time.

The following amendment was offered in the Committee on Housing & Community Affairs, adopted and ordered printed:

**AMENDMENT NO. 1 TO HOUSE BILL 4023**

AMENDMENT NO. 1. Amend House Bill 4023 by replacing everything after the enacting clause with the following:

"Section 5. The Criminal Code of 1961 is amended by changing Section 11-21 and by adding Articles 12A and 12B as follows:

(720 ILCS 5/11-21) (from Ch. 38, par. 11-21)

Sec. 11-21. Harmful material.

(a) As used in this Section:

"Distribute" means transfer possession of, whether with or without consideration.

"Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when, taken as a whole, it (i) predominately appeals to the prurient interest in sex of minors, (ii) is patently offensive to prevailing standards in the adult community in the State as a whole with respect to what is suitable material for minors, and (iii) lacks serious literary, artistic, political, or scientific value for minors.

"Knowingly" means having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents.

"Material" means (i) any picture, photograph, drawing, sculpture, film, video game, computer game, video or similar visual depiction, including any such representation or image which is stored electronically, or (ii) any book, magazine, printed matter however reproduced, or recorded audio of any sort.

"Minor" means any person under the age of 18.

"Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.

"Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one clothed for sexual gratification or stimulation.

"Sexual conduct" means acts of masturbation, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(b) A person is guilty of distributing harmful material to a minor when he or she:

(1) knowingly sells, lends, distributes, or gives away to a minor, knowing that the minor is under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age;

(A) any material which depicts nudity, sexual conduct or sado-masochistic abuse, or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse, and which taken as a whole is harmful to minors;

(B) a motion picture, show, or other presentation which depicts nudity, sexual conduct or sado-masochistic abuse and is harmful to minors; or

(C) an admission ticket or pass to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation; or

(2) admits a minor to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation, knowing that the minor is a person under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age.

(c) In any prosecution arising under this Section, it is an affirmative defense:

(1) that the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older, which was relied upon by the accused;

(2) that the defendant was in a parental or guardianship relationship with the minor or that the minor was accompanied by a parent or legal guardian;

(3) that the defendant was a bona fide school, museum, or public library, or was a person acting in

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the course of his or her employment as an employee or official of such organization or retail outlet affiliated with and serving the educational purpose of such organization;

(4) that the act charged was committed in aid of legitimate scientific or educational purposes; or

(5) that an advertisement of harmful material as defined in this Section culminated in the sale or distribution of such harmful material to a child under circumstances where there was no personal confrontation of the child by the defendant, his employees, or agents, as where the order or request for such harmful material was transmitted by mail, telephone, Internet or similar means of communication, and delivery of such harmful material to the child was by mail, freight, Internet or similar means of transport, which advertisement contained the following statement, or a substantially similar statement, and that the defendant required the purchaser to certify that he or she was not under the age of 18 and that the purchaser falsely stated that he or she was not under the age of 18: "NOTICE: It is unlawful for any person under the age of 18 to purchase the matter advertised. Any person under the age of 18 that falsely states that he or she is not under the age of 18 for the purpose of obtaining the material advertised is guilty of a Class B misdemeanor under the laws of the State."

(d) The predominant appeal to prurient interest of the material shall be judged with reference to average children of the same general age of the child to whom such material was sold, lent, distributed or given, unless it appears from the nature of the matter or the circumstances of its dissemination or distribution that it is designed for specially susceptible groups, in which case the predominant appeal of the material shall be judged with reference to its intended or probable recipient group.

(e) Distribution of harmful material in violation of this Section is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony.

(f) Any person under the age of 18 that falsely states, either orally or in writing, that he or she is not under the age of 18, or that presents or offers to any person any evidence of age and identity that is false or not actually his or her own for the purpose of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material is guilty of a Class B misdemeanor.

(a) Elements of the Offense.

A person who, with knowledge that a person is a child, that is a person under 18 years of age, or who fails to exercise reasonable care in ascertaining the true age of a child, knowingly distributes to or sends or causes to be sent to, or exhibits to, or offers to distribute or exhibit any harmful material to a child, is guilty of a misdemeanor.

(b) Definitions.

(1) Material is harmful if, to the average person, applying contemporary standards, its predominant appeal, taken as a whole, is to prurient interest, that is a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters, and is material the redeeming social importance of which is substantially less than its prurient appeal.

(2) Material, as used in this Section means any writing, picture, record or other representation or embodiment.

(3) Distribute means to transfer possession of, whether with or without consideration.

(4) Knowingly, as used in this section means having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents thereof.

(c) Interpretation of Evidence.

The predominant appeal to prurient interest of the material shall be judged with reference to average children of the same general age of the child to whom such material was offered, distributed, sent or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for specially susceptible groups, in which case the predominant appeal of the material shall be judged with reference to its intended or probable recipient group.

In prosecutions under this section, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate the material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the material and can justify the conclusion that the redeeming social importance of the material is in fact substantially less than its prurient appeal.

(d) Sentence.

Distribution of harmful material in violation of this Section is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony.

(e) Affirmative Defenses.

(1) Nothing in this section shall prohibit any public library or any library operated by an accredited institution of higher education from circulating harmful material to any person under 18 years of age,

provided such circulation is in aid of a legitimate scientific or educational purpose, and it shall be an affirmative defense in any prosecution for a violation of this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(2) Nothing in this section shall prohibit any parent from distributing to his child any harmful material.

(3) Proof that the defendant demanded, was shown and acted in reliance upon any of the following documents as proof of the age of a child, shall be a defense to any criminal prosecution under this section: A document issued by the federal government or any state, county or municipal government or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act or an identification card issued to a member of the armed forces.

(4) In the event an advertisement of harmful material as defined in this section culminates in the sale or distribution of such harmful material to a child, under circumstances where there was no personal confrontation of the child by the defendant, his employees or agents, as where the order or request for such harmful material was transmitted by mail, telephone, or similar means of communication, and delivery of such harmful material to the child was by mail, freight, or similar means of transport, it shall be a defense in any prosecution for a violation of this section that the advertisement contained the following statement, or a statement substantially similar thereto, and that the defendant required the purchaser to certify that he was not under 18 years of age and that the purchaser falsely stated that he was not under 18 years of age: "NOTICE: It is unlawful for any person under 18 years of age to purchase the matter herein advertised. Any person under 18 years of age who falsely states that he is not under 18 years of age for the purpose of obtaining the material advertised herein, is guilty of a Class B misdemeanor under the laws of the State of Illinois."

(f) Child Falsifying Age.

Any person under 18 years of age who falsely states, either orally or in writing, that he is not under the age of 18 years, or who presents or offers to any person any evidence of age and identity which is false or not actually his own for the purpose of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material, is guilty of a Class B misdemeanor.

(Source: P.A. 77-2638.)

(720 ILCS 5/Art. 12A heading new)

#### VIOLENT VIDEO GAMES

(720 ILCS 5/12A-1 new)

Sec. 12A-1. Short title. This Article may be cited as the Violent Video Games Law.

(720 ILCS 5/12A-5 new)

Sec. 12A-5. Findings.

(a) The General Assembly finds that minors who play violent video games are more likely to:

(1) Exhibit violent, asocial, or aggressive behavior.

(2) Experience feelings of aggression.

(3) Experience a reduction of activity in the frontal lobes of the brain which is responsible for controlling behavior.

(b) While the video game industry has adopted its own voluntary standards describing which games are appropriate for minors, those standards are not adequately enforced.

(c) Minors are capable of purchasing and do purchase violent video games.

(d) The State has a compelling interest in assisting parents in protecting their minor children from violent video games.

(e) The State has a compelling interest in preventing violent, aggressive, and asocial behavior.

(f) The State has a compelling interest in preventing psychological harm to minors who play violent video games.

(g) The State has a compelling interest in eliminating any societal factors that may inhibit the physiological and neurological development of its youth.

(h) The State has a compelling interest in facilitating the maturation of Illinois' children into law-abiding, productive adults.

(720 ILCS 5/12A-10 new)

Sec. 12A-10. Definitions. For the purposes of this Article, the following terms have the following meanings:

(a) "Video game retailer" means a person who sells or rents video games to the public.

(b) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming

system, console, or other technology.

(c) "Minor" means a person under 18 years of age.

(d) "Person" includes but is not limited to an individual, corporation, partnership, and association.

(e) "Violent" video games include depictions of or simulations of human-on-human violence in which the player kills or otherwise causes serious physical harm to another human. "Serious physical harm" includes depictions of death, dismemberment, amputation, decapitation, maiming, disfigurement, mutilation of body parts, or rape.

(720 ILCS 5/12A-15 new)

Sec. 12A-15. Restricted sale or rental of violent video games.

(a) A person who sells, rents, or permits to be sold or rented, any violent video game to any minor, commits a business offense for which a fine of \$1,001 may be imposed.

(b) A person who sells, rents, or permits to be sold or rented any violent video game via electronic scanner must program the electronic scanner to prompt sales clerks to check identification before the sale or rental transaction is completed. A person who violates this subsection (b) commits a business offense for which a fine of \$1,001 may be imposed.

(c) A person may not sell or rent, or permit to be sold or rented, any violent video game through a self-scanning checkout mechanism. A person who violates this subsection (c) commits a business offense for which a fine of \$1,001 may be imposed.

(720 ILCS 5/12A-20 new)

Sec. 12A-20. Affirmative defenses. In any prosecution arising under this Article, it is an affirmative defense:

(1) that the defendant was a family member of the minor for whom the game was purchased. "Family member" for the purpose of this Section, includes a parent, sibling, grandparent, aunt, uncle, or first cousin; or

(2) that the minor who purchased the game exhibited a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older, which the defendant reasonably relied on and reasonably believed to be authentic.

(720 ILCS 5/12A-25 new)

Sec. 12A-25. Labeling of violent video games.

(a) Video game retailers shall label all violent video games as defined in this Article, with a solid white "18" outlined in black. The "18" shall have dimensions of no less than 2 inches by 2 inches. The "18" shall be displayed on the front face of the video game package.

(b) A retailer's failure to comply with this Section is a petty offense punishable by a fine of \$500 for the first 3 violations, and a business offense punishable by a fine of \$1,001 for every subsequent violation.

(720 ILCS 5/Art. 12B heading new)

#### SEXUALLY EXPLICIT VIDEO GAMES

(720 ILCS 5/12B-1 new)

Sec. 12B-1. Short title. This Article may be cited as the Sexually Explicit Video Games Law.

(720 ILCS 5/12B-5 new)

Sec. 12B-5. Findings. The General Assembly finds sexually explicit video games inappropriate for minors and that the State has a compelling interest in assisting parents in protecting their minor children from sexually explicit video games.

(720 ILCS 5/12B-10 new)

Sec. 12B-10. Definitions. For the purposes of this Article, the following terms have the following meanings:

(a) "Video game retailer" means a person who sells or rents video games to the public.

(b) "Video game" means an object or device that stores recorded data or instructions, receives data or instructions generated by a person who uses it, and, by processing the data or instructions, creates an interactive game capable of being played, viewed, or experienced on or through a computer, gaming system, console, or other technology.

(c) "Minor" means a person under 18 years of age.

(d) "Person" includes but is not limited to an individual, corporation, partnership, and association.

(e) "Sexually explicit" video games include those that the average person, applying contemporary community standards would find, with respect to minors, is designed to appeal or pander to the prurient interest and depicts or represents in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act or a lewd exhibition of the genitals or post-pubescent female breast.

(720 ILCS 5/12B-15 new)

Sec. 12B-15. Restricted sale or rental of sexually explicit video games.

(a) A person who sells, rents, or permits to be sold or rented, any sexually explicit video game to any minor, commits a business offense for which a fine of \$1,001 may be imposed.

(b) A person who sells, rents, or permits to be sold or rented any sexually explicit video game via electronic scanner must program the electronic scanner to prompt sales clerks to check identification before the sale or rental transaction is completed. A person who violates this subsection (b) commits a business offense for which a fine of \$1,001 may be imposed.

(c) A person may not sell or rent, or permit to be sold or rented, any sexually explicit video game through a self-scanning checkout mechanism. A person who violates this subsection (c) commits a business offense for which a fine of \$1,001 may be imposed.

(720 ILCS 5/12B-20 new)

Sec. 12B-20. Affirmative defenses. In any prosecution arising under this Article, it is an affirmative defense:

(1) that the defendant was a family member of the minor for whom the game was purchased. "Family member" for the purpose of this Section, includes a parent, sibling, grandparent, aunt, uncle, or first cousin; or

(2) that the minor who purchased the game exhibited a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older, which the defendant reasonably relied on and reasonably believed to be authentic.

(720 ILCS 5/12B-25 new)

Sec. 12B-25. Labeling of sexually explicit video games.

(a) Video game retailers shall label all sexually explicit video games as defined in this Act, with a solid white "18" outlined in black. The "18" shall have dimensions of no less than 2 inches by 2 inches. The "18" shall be displayed on the front face of the video game package.

(b) A retailer who fails to comply with this Section is guilty of a petty offense punishable by a fine of \$500 for the first 3 violations, and a business offense punishable by a \$1,001 fine for every subsequent violation.

(720 ILCS 5/12B-30 new)

Sec. 12B-30. Posting notification of video games rating system.

(a) A retailer who sells or rents video games shall post a sign that notifies customers that a video game rating system, created by the Entertainment Software Ratings Board, is available to aid in the selection of a game. The sign shall be prominently posted in, or within 5 feet of, the area in which games are displayed for sale or rental, at the information desk if one exists, and at the point of purchase.

(b) The lettering of each sign shall be printed, at a minimum, in 36-point type and shall be in black ink against a light colored background, with dimensions of no less than 18 by 24 inches.

(c) A retailer's failure to comply with this Section is a petty offense punishable by a fine of \$500 for the first 3 violations, and a business offense punishable by a \$1,001 fine for every subsequent violation.

(720 ILCS 5/12B-35 new)

Sec. 12B-35. Availability of brochure describing rating system.

(a) A video game retailer shall make available upon request a brochure to customers that explains the Entertainment Software Ratings Board ratings system.

(b) A retailer who fails to comply with this Section shall receive the punishment described in subsection (b) of Section 12B-25.

Section 98. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 99. Effective Date. This Act takes effect January 1, 2006."

There being no further amendments, the bill, as amended, was ordered to a third reading.

On motion of Senator Maloney, **House Bill No. 4030** was taken up, read by title a second time. Floor Amendment No. 1 was held in the Committee on Rules.

There being no further amendments, the bill was ordered to a third reading.

On motion of Senator Halvorson, **House Bill No. 4058** was taken up, read by title a second time and ordered to a third reading.

[May 10, 2005]

On motion of Senator Hunter, **House Bill No. 4067** was taken up, read by title a second time and ordered to a third reading.

### LEGISLATIVE MEASURES FILED

The following Floor amendments to the House Bills listed below have been filed with the Secretary and referred to the Committee on Rules:

Floor Amendment No. 2 to House Bill 212  
 Floor Amendment No. 1 to House Bill 414  
 Floor Amendment No. 1 to House Bill 1457  
 Floor Amendment No. 1 to House Bill 2348  
 Floor Amendment No. 1 to House Bill 2351

### MESSAGE FROM THE HOUSE

A message from the House by

Mr. Mahoney, Clerk:

Mr. President -- I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of bills of the following titles, to-wit:

SENATE BILL NO. 2062

A bill for AN ACT concerning aging.

SENATE BILL NO. 2090

A bill for AN ACT concerning criminal law.

SENATE BILL NO. 2112

A bill for AN ACT concerning education.

Passed the House, May 10, 2005.

MARK MAHONEY, Clerk of the House

### CONSIDERATION OF MOTION IN WRITING

Pursuant to Motion in Writing filed earlier today, Senator Viverito moved that **Senate Bills numbered 29, 55, 56, 71, 73, 103, 113, 118, 130, 134, 146, 149, 166, 167, 168, 177, 178, 179, 180, 181, 182, 194, 195, 196, 207, 212, 213, 218, 228, 237, 238, 240, 249, 258, 259, 267, 268, 269, 281, 282, 289, 314, 315, 342, 344, 351, 374, 376, 386, 387, 408, 410, 418, 421, 425, 428, 437, 448, 453, 462, 474, 515, 532, 540, 548, 551, 552, 573, 576, 578, 579, 580, 614, 617, 772, 773, 777, 779, 781, 782, 783, 784, 785, 786, 787, 788, 818, 944, 1094, 1224, 1229, 1231, 1295, 1303, 1327, 1329, 1450, 1455, 1456, 1473, 1496, 1504, 1506, 1507, 1508, 1510, 1511, 1512, 1513, 1643, 1653, 1691, 1692, 1695, 1713, 1721, 1724, 1725, 1743, 1744, 1764, 1766, 1805, 1808, 1810, 1811, 1837, 1838, 1845, 1846, 1852, 1859, 1861, 1871, 1872, 1877, 1881, 1886, 1887, 1902, 1918, 1919, 1920, 1921, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1958, 1961, 1963, 1998, 2006, 2013, 2028, 2031, 2041, 2050, 2051, 2056, 2057, 2069, 2073, 2074, 2077, 2096, 2100, 2105 and 2114** be re-referred to the Senate Rules Committee.

The motion prevailed.

### COMMITTEE MEETING ANNOUNCEMENTS

The Chair announced the following committees will meet today:

Appropriations I, Room 212 at 2:30 p.m.

Appropriations II, Room 212 at 4:00 p.m.

Appropriations III, Room 212 at 4:30 p.m.

State Government, Room A-1 Stratton Building at 3:00 p.m.

[May 10, 2005]

At the hour of 2:22 o'clock p.m., the Chair announced that the Senate stand adjourned until Wednesday, May 11, 2005, at 9:00 o'clock a.m.