

Legal Update

January 2018

SIGNIFICANT CHANGES IN ILLINOIS LAW

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We wish our clients and friends a healthy, happy, and prosperous 2018. Our January *Legal Update* highlights several new laws that may be of interest to Illinois businesses and individuals. We encourage all those potentially affected by these developments to consult with legal counsel to ensure that they are in compliance with or consider taking advantage of provisions in these laws.

Amendments and New Laws Effective January 1, 2018

Amendments to Illinois Consumer Fraud and Deceptive Business Practices Act

Illinois amended its Consumer Fraud and Deceptive Business Practices Act to prohibit the enforcement of non-disparagement clauses in consumer contracts for the sale or lease of consumer merchandise or services. The amended Act makes these provisions void and unenforceable. Accordingly, businesses should not include a provision in their customer contracts that would waive a customer's right to make statements regarding the business or its merchandise or services, including online reviews. Businesses also may not threaten or otherwise penalize a customer for making such statements or reviews. The amended law does not, however, prohibit a business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.

Price Discrimination Changes to Consumer Fraud and Deceptive Business Practices Act

The Consumer Fraud and Deceptive Business Practices Act has also been amended to try to expose gender-based price discrimination by requiring tailors or businesses providing clothing alterations, barbershops, hair salons, dry cleaners, and laundries to provide price lists for standard services upon request. Illinois businesses may still lawfully differentiate prices for services based upon factors such as market conditions, the amount of time, difficulty, cost of providing the services, or the equipment used.

Changes to Illinois Insurance Code Prohibiting Exclusions for Preexisting Conditions

Insurance companies are now prohibited from denying coverage to Illinois residents with pre-existing conditions under any policy for individual or group accident and health insurance that is issued, amended, delivered, or renewed.

Cyberstalking Amendments to Illinois Criminal Code

Illinois expanded the definition of a cyberstalking crime to include the installation of electronic monitoring software or spyware to harass another person in connection with a threat against that person or his or her family member. Moreover, Illinois also expanded the definition of a hate crime to include intimidation, stalking, cyberstalking, and transmission of obscene messages. A person who suffers from intimidation, stalking, cyberstalking, transmission of obscene messages, or harassment by phone or electronic

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communications as a result of a hate crime may bring a civil lawsuit, and a court may impose a civil penalty of up to \$25,000 for each violation.

Amendments to Genetic Information Privacy Act

Illinois has further amended the Genetic Information Privacy Act to provide additional protections for employees' genetic information. The Act bars employers from penalizing an employee who does not disclose his or her genetic information or who chooses not to participate in a workplace wellness program that requires disclosure of genetic information. Illinois employers must also continue to treat employees' genetic information in accordance with federal requirements under laws such as the Genetic Information Nondiscrimination Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act, the Family and Medical Leave Act, and the Occupational Safety and Health Act.

Illinois Probate Act Amended to Allow Unborn Children to Inherit

Illinois has revised the Probate Act to allow a child born after a parent's death to inherit even if the child was not yet conceived at the time of his or her parent's death under certain circumstances. If a parent dies without a will and the child is born from the parent's eggs or sperm after the parent's death, the child will still be entitled to receive the same share of the estate as if the child had been born in wedlock during the parent's lifetime. The child must, however, be born of the deceased parent's gametes within 36 months of the death, the deceased parent must have given written consent to be a parent of a child born posthumously, and the administrator of the estate must timely receive written notice and a copy of the parent's written consent. These changes apply to the estates of individuals who die without wills on or after January 1, 2018. If, however, the parent has a will, an unconceived child at the time of the parent's death will not be treated as his or her child unless, for example, the will expressly demonstrates the parent's intent to include the child.

Anti-Discrimination Amendments to Illinois Jury Act

A person who is qualified and able to serve as a juror may not be excluded from jury service in any Illinois court on the basis of race, color, religion, sex, national origin, or economic status, unless otherwise specifically provided by the Jury Act.

Pet Ownership and Custody Amendments to Marriage and Dissolution of Marriage Act

The Illinois Marriage and Dissolution of Marriage Act now provides for the ownership and custody of pets (but not service animals) upon divorce. Either party in a divorce proceeding may petition for sole or joint possession of and responsibility for a pet that was jointly owned by the parties. The parties may also enter into an agreement allocating ownership of and responsibility for these pets. If a court finds that the pet is a marital asset, the amended Act requires the court to take into consideration the well-being of the animal when allocating the sole or joint ownership of and responsibility for the pet.

Amendments and New Laws Effective Since the Last FVLD Annual Update

Religious Garb Law

Illinois employers should be aware of new restrictions on dress codes under the Religious Garb Law, which amended the Illinois Human Rights Act and took effect on August 11, 2017. With the changes, the Illinois Human Rights Act now prohibits employers from conditioning employment on any terms or conditions that would require a person to violate or forgo a sincerely held practice of his or her religion, such as the wearing of attire, clothing, or facial hair in accordance with religious requirements. The law includes an exception for an employer who has engaged in a bona fide effort with the employee and is able to

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demonstrate that it cannot reasonably accommodate his or her religious belief, practice, or observance without undue hardship on the employer's business. Dress code or grooming policies that include restrictions on attire, clothing, or facial hair for workplace safety or food sanitation purposes remain lawful under this law. Illinois employers that are covered under Title VII of the Civil Rights Act may also have obligations under federal law to permit employees to observe their religious dress and grooming practices.

Amendments to Illinois Limited Liability Company Act

Effective July 1, 2017, Illinois amended its Limited Liability Company Act in a number of ways, including lowering all filing fees. The amended Act also allows an LLC operating agreement to (a) eliminate the liability of a member or manager to the LLC or to fellow members or managers of the LLC and (b) limit or eliminate fiduciary duties of members or managers, except for the duty of care. The amended Act also allows an LLC to operate using oral operating agreements. The amended Act further provides that members are not agents of the LLC merely through membership and allows LLCs to file a Statement of Authority with the Secretary of State that defines the authority of a member or manager.

Amendments and New Laws on the Horizon for 2018

Illinois Omnibus Act

The Illinois Omnibus Act will take effect on July 1, 2018. This new Act amends many of the Illinois business acts. The new Act allows any form of domestic entity (e.g. limited liability company or corporation) to convert to any other form of domestic entity or any type of foreign entity. The new Act will make it easier for an entity to convert into whatever form best suits its business needs. Prior to any conversion, however, businesses must consider other implications, like federal taxes or liability exposure.

Please note that this Legal Update discusses only a small sample of new Illinois laws. Certain laws that we do not mention may nonetheless be particularly important to you or your business. Moreover, there may be new federal laws (especially the Tax Cut and Jobs Act), and laws in other states where you do business, that may affect you or your business.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Peter T. Berk 312.701.6870, pberk@fvldlaw.com, Cecilia M. Sub 312.701.6841 csub@fvldlaw.com, Paul M. King 312.701.6842 pking@fvldlaw.com, or your regular FVLD contact.

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