



# HGSUW

## News & Views

**Hasselberg Grebe Snodgrass  
Urban & Wentworth  
Attorneys and Counselors**

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### LAcon OFFICE OPEN TO SERVE

Our firm is pleased to announce that we have opened a second office in Lacon. Located at 310 Fifth Street (Route 17) in downtown Lacon, we are committed to providing quality legal services to the residents of Marshall County and the surrounding communities. The attorneys at our firm are happy to meet with clients for appointments and consultations at our new Lacon office or at our downtown Peoria location. Our law firm is made up of 13 practicing attorneys who help clients with a wide range of legal matters, including estate planning, agricultural law, business and employment law, marital law, real estate, tax issues, personal injury, and many others. Contact our office at (309) 637-1400 to set up an appointment today.



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## ILLINOIS LEGISLATION UPDATE

The Illinois General Assembly has been busy this past year enacting legislation on a diverse set of issues. Several of the new laws are discussed below.

### **Nursing Homes Required to Provide Virtual Visits**

The COVID-19 pandemic has been particularly difficult for nursing home residents and their families. In order to stop the spread of the disease, in person visits have been strictly curtailed. This can reduce COVID-19 transmission, but it also results in social isolation and it can be a trigger for declining health. In response to these concerns, the Illinois General Assembly passed Senate Bill 2137, which amends the Nursing Home Care Act. The bill was subsequently signed into law on August 27, 2021.

The new law requires long term care facilities to adopt policies that encourage in-person contact with the residents' friends, family and loved ones. Long term care facilities are also required to adopt policies so that technology is available for residents to assist with social interaction (such as video conferencing technology) when in-person contact is limited. According to a 2020 study by the National Academies of Sciences, Engineering, and Medicine, social isolation presents a major risk of premature mortality for older Americans. Regulations implementing the new law are to be issued later this year, with penalties for non-compliance to begin in 2023.

### **New Restrictions on "Puppy Mill" Sales**

On August 27, 2021, Governor Pritzker signed into law House Bill 1711, which prohibits the retail sale of dogs and cats from "puppy mills." When the law goes into effect, pet shop operators will be prohibited from selling dogs or cats unless it was obtained from an animal control facility or animal shelter. Pet shop operators will also be required to notify consumers which animal control facility or shelter each dog or cat was obtained from. However, a person who sells pets that he or she produced and raised are not considered pet shop operators under the new law. The law goes into effect as of February 23, 2022.

### **Smart Device Data Use**

"Smart" devices are now nearly ubiquitous in the home, with an increasing number of household gadgets featuring internet connectivity and programmable features. Video doorbells, internet connected refrigerators, and smart thermostats are but a few examples, in addition to the Amazon Alexa and Google Assistant integrated devices. As they become more commonplace, concerns have been raised about the privacy implications associated with smart devices, and more specifically, the manner in which user information is collected and used. Many such devices collect an incredible amount of personal information through the use of integrated video cameras and microphones.

To address some of these concerns, the Illinois General Assembly passed the Personal Household Privacy Act, which goes into effect on January 1, 2022. Under the new law, law enforcement agencies are not allowed to acquire household electronic data (i.e., information collected by a home smart device) unless the agency gets a search warrant first, if certain emergency situations arise, or if the owner consents. Additionally, the new law places restrictions on the retention of such data by law enforcement agencies; the data must be destroyed within 60 days unless the information is relevant to an ongoing investigation, or if there is reasonable suspicion of criminal activity.

### **Illinois Prisoners with Terminal Illnesses May Be Eligible for Early Release**

Beginning on January 1, 2022, Illinois prisoners with certain medical conditions may petition for early release. To be eligible to apply for early release, prisoners must have a terminal illness. Additionally, prisoners can apply for early release if they have become medically incapacitated subsequent to sentencing, or have received a diagnosis of an illness that will result in medical incapacity. However, medical release is not guaranteed. Pursuant to the new law, the grant of medical release will be at the sole discretion of the Prisoner Review Board. Once the law goes into effect next year, it will be deemed retroactive and will apply to all prisoners with the Illinois Department of Corrections.

Please contact Hasselberg Grebe Snodgrass Urban & Wentworth at 309-637-1400 if you have any questions pertaining to these new developments.





## NEW RESTRICTIONS ON EMPLOYEE NON-COMPETE AGREEMENTS

Although employee non-compete agreements may be commonplace for high earning executives and those in the tech industry, their use among more modest wage earners has attracted scrutiny in recent years. In 2016 the Illinois Attorney General's Office filed suit against Jimmy John's regarding the sandwich chain's use of non-competition agreements for its employees. According to the Attorney General's Office, Jimmy John's had required all employees to sign a non-compete agreement which prohibited employees from working for any competing sandwich shop for a two-year period, within a two-mile range of any Jimmy John's restaurant across the country. The lawsuit was ultimately settled in December 2016 and Jimmy John's agreed to rescind such agreements.

In response to these issues, on August 13, 2021, Governor Pritzker signed into law a bill that will greatly restrict the use of employee "restrictive covenants," such as non-compete and non-solicitation agreements. It amends the Freedom to Work Act, which currently prohibits the use of non-compete agreements in Illinois for employees making up to \$13.00 per hour. The law significantly raises the employee earning threshold for non-compete agreements, adds restrictions on non-solicitation agreements, and adds many other requirements to such agreements.

The bill distinguishes between "non-compete" agreements and "non-solicitation" agreements. Non-compete agreements generally prohibit employees from working for a competitor or a particular industry. To be a valid agreement, the non-compete must typically be limited in duration and geographic region. For instance, a non-compete agreement may prohibit an employee from working for a competing business for a period of six months, within a geographic range of 50 miles from the corporate office. Non-solicitation agreements, on the other hand, generally prohibit employees from poaching clients, customers, vendors, or other business relationships of the employer. Because non-solicitation agreements focus on pre-existing business relationships, and not entire industries or business areas, they have typically attracted less scrutiny.

Under the new bill, employers are prohibited from having an employee enter into a non-compete agreement unless the employee earns over \$75,000 per year (about \$38.46 per hour). For non-solicitation agreements, the employee must earn over \$45,000 per year (about \$23.08 per hour).

In addition to the salary thresholds, the bill requires that the agreement must "not impose undue hardship on the employee." Further, the employee must receive adequate consideration for the agreement (such as a sign on bonus or other benefit) and the agreement must not be injurious to the public, among other requirements. The employer must also give the employee 14 days to review the agreement prior to signing.

The bill contains an attorney's fees provision as well. If an employer files suit to enforce a non-compete or non-solicitation agreement, and the employee ultimately prevails (i.e., the court finds the agreement to be unenforceable), the employee can seek attorney's fees and costs from the former employer.

For the construction industry, non-compete agreements will be completely prohibited. However, the law creates an exception for construction employees who work in a managerial, sales, engineering, or design role. Construction company owners and shareholders are also excepted.

The new law will go into effect on January 1, 2022.

If your business needs assistance with employment related issues such as restrictive covenants, drafting employee handbooks, drug testing issues, EEOC/IDHR charges, or other compliance matters, please contact the attorneys at Hasselberg Grebe Snodgrass Urban & Wentworth at 309-637-1400.



## ILLINOIS STUDENT-ATHLETE ENDORSEMENT RIGHTS ACT SIGNED INTO LAW

Big news in college sports – as of July 1, 2021, Illinois student athletes can now be paid for the use of their name, image, likeness, and voice in accordance with the Student-Athlete Endorsement Rights Act. Additionally, student athletes are allowed to hire an agent or attorney to represent them regarding licensing deals. Student athletes are required to provide notice to their university when entering into such agreements. In a June 29<sup>th</sup> press release, Governor Pritzker's office commented that the new law will “[undo] the antiquated practice of banning students from earning money despite the hours they commit to their sport.” For the astute *News and Views* reader, you may have noticed that we reported on this same topic in our September 2020 issue.

The new law leaves in place certain restrictions on student athlete compensation. For instance, student athletes are prohibited from earning compensation for merely participating in sports events or programs. Student athletes are also prohibited from earning compensation in exchange for agreeing to attend a certain university. In other words, universities cannot offer sign on bonuses to prospective student athletes. Additionally, student athletes will retain the “student” designation and are not considered employees or independent contractors of the university they are attending. Student athletes are further prohibited from endorsing or promoting certain types of businesses, such as sports betting, cannabis, and tobacco or alcohol products, among other restrictions. Moreover, universities and colleges retain the right to control how their logos and trademarks are used.

The issue of compensation for college “student athletes” is also the subject of a recent U.S. Supreme Court decision: *National Collegiate Athletic Association v. Alston*. In that case, a group of current and former student athletes filed an antitrust lawsuit against the NCAA (and II Division I Conferences) challenging student athlete compensation restrictions. The trial court held that a narrow set of NCAA rules violated the Sherman Antitrust Act, specifically the limitations on certain types of education related benefits that could be made available for student athletes playing Division I football and basketball.

In a unanimous decision issued on June 21<sup>st</sup> of this year, the Supreme Court ultimately upheld the ruling. Although the Supreme Court only addressed a narrow set of NCAA restrictions, the decision may cast doubt on the viability of other NCAA compensation rules as well. In a strongly worded concurring opinion, Supreme Court Justice Brett Kavanaugh commented, “traditions alone cannot justify the NCAA’s decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated” and “[t]he NCAA is not above the law.” Moving forward, whether the NCAA’s other student athlete compensation restrictions will be successfully challenged remains to be seen.







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Our firm is also proud of the work we perform for the agriculture community. For a more focused look at legal issues facing farmers and agri-businesses, check out our “Agri-Business Legal News” newsletter. This newsletter is available on our firm website as well. If you would like to be added to the Agri-Business Legal News mailing list, please contact us.





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