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4

Void Contracts or Clauses Under Illinois Statutes

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I. [4.1] INTRODUCTION

There are many statutes in Illinois that make contracts or contractual provisions void. Void contracts can take a variety of forms. For example, a void contract can take the form of a legitimate contract that has been declared null by the courts as a violation of public policy or changes in the law or government policy. Further, many statutes merely declare certain contracts unlawful. An example is the Home Repair and Remodeling Act, 815 ILCS 513/1, *et seq.*, which makes unlawful a home repair over \$1,000 when the repairer does not get the required written contract or provide the mandated brochure. 815 ILCS 513/20, 513/30.

There are very few reported cases that interpret these statutes. Most likely, this is because the trial judges and lawyers had no trouble enforcing the statutes or no one knew that these statutes existed.

Real estate has drawn the attention of the legislature. If particular statutory provisions are not followed, a condominium sale, a sale on an agreement for deed, or a sale of a timeshare can be void. See the discussion in §§4.11 – 4.19 below. Of particular importance in terms of statutes targeting contracts or contractual provisions are relationships with governmental entities. There are several statutes that render void or voidable various contracts with state agencies and local governments when certain requirements are not met, such as full disclosure of conflicts of interest, competitive bidding, and budgeting and appropriation. See §§4.2 – 4.10 below.

The legislature has singled out contracts or clauses of specific business contracts. If the statutory directives are not followed, the business' agreements may be void. Examples of the businesses that have drawn the attention of the legislature are mail order hearing aid businesses (see §4.21 below), physical fitness businesses (§4.22 below), dating referral services (§4.23 below), dance studios (§4.24 below), invention development services (§4.25 below), business brokers (§4.30 below), loan brokers (§4.26 below), and security businesses (§4.27 below).

Insurance has special provisions, though there are not many. The Director of the Illinois Department of Insurance has the authority to void certain insurance contracts, and a state insurance liquidator can treat certain transfers as preferential and void them. See the discussion in §§4.40 – 4.47 below.

The employment relationship gets scrutiny. Void agreements between an employer and employee range from paying less than the mandatory minimum wage to paying oppressive and unreasonable wages for women and children. See §§4.48 – 4.55 below.

There are also statutes that can be described only as miscellaneous provisions. These range from the obvious (*e.g.*, a contract with a person who has a plenary guardian, discussed in §4.57 below) to the arcane (*e.g.*, a barber school cannot bind a student to a contract that waives the student's right to make a claim against the barber school, discussed in §4.56 below). See §§4.58 – 4.66 below for a discussion of additional miscellaneous statutes.

This chapter does not address cases that hold various contracts or contractual provisions are invalid based on common-law principles. It includes only Illinois statutory provisions that invalidate contracts or various provisions in contracts. Some statutes declare contracts or provisions void, whereas others provide for the ability to void a contract or provision at the election of one of the parties sought to be protected by the statute.

II. [4.2] CONTRACTS WITH THE GOVERNMENT OR CLAUSES IN GOVERNMENT CONTRACTS

Contracts with a governmental unit are especially vulnerable under the statutes. There are many provisions making contracts void if a member of an approving authority has a conflict of interest (discussed in §4.3 below), if the money for the contract has not been budgeted and appropriated (§4.7 below), if the bidders on the contract collude (§4.6 below), or if the statute, rules, or regulations of the particular unit of government are violated (§4.8 below).

A. [4.3] Conflict of Interest Statutes

There are several conflict of interest statutes. In general, they are all similar to the Public Officer Prohibited Activities Act (sometimes called the Corrupt Practices Act), 50 ILCS 105/0.01, *et seq.*, which states that “[a]ny contract made and procured in violation hereof is void.” 50 ILCS 105/3(a). A person holding public office may not be directly or indirectly “financially interested” in a contract on which that person might be asked to act or vote. Being “financially interested” includes being bribed. *Id.*

In all cases in which a conflict exists, the official must disclose his or her interest and abstain from voting on the issue. 50 ILCS 105/3(b). Generally, a public official may be connected to an organization that sells products or services to his or her public entity if the interest is minimal, it is disclosed, and the official abstains from voting. 50 ILCS 105/3(b)(1). A minimal interest usually means that the person has less than a 7.5-percent share in the ownership of the entity that would be awarded the contract. *Id.* A similar exemption exists for contracts that do not exceed \$2,000. 50 ILCS 105/3(b)(2). Further, the aggregate government contracts with this particular entity must not exceed a stated aggregate amount. *Id.* If a municipal officer has less than a 1-percent ownership share, then all that is required is a majority vote of the remainder of the board and that the member publicly discloses this interest and abstains from voting on the issue. 50 ILCS 105/3(b-5).

Mulligan v. Village of Bradley, 131 Ill.App.3d 513, 475 N.E.2d 1029, 86 Ill.Dec. 650 (3d Dist. 1985), is a good example of a public official’s conflict of interest. In *Mulligan*, the president of the Village of Bradley proposed a new position of village administrator, which entailed seeking new business in the village and included an annual salary. The village president lobbied for the job and, after abstaining from voting on the issue, was offered the job and accepted it. He subsequently resigned as village president. The replacement village president fired him after a hearing. 475 N.E.2d at 1031 – 1032. The terminated administrator (and former president) sued the village under a variety of theories, including breach of the three-year employment contract that

provided for his position as village administrator. 475 N.E.2d at 1030 – 1032. The trial court granted the village’s motion for judgment on the pleadings on the breach-of-contract claim, which the appellate court affirmed, based in part on the Corrupt Practices Act’s conflict of interest provisions.

Various special development statutes have similar provisions that void contracts for conflicts of interest:

1. the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1, *et seq.* (70 ILCS 210/25.3);
2. the Illinois Sport Facilities Authority Act, 70 ILCS 3205/1, *et seq.* (70 ILCS 3205/17) and the Downstate Illinois Sports Facilities Authority Act, 70 ILCS 3210/1, *et seq.* (70 ILCS 3210/70);
3. the Illinois Housing Development Act, 20 ILCS 3805/1, *et seq.* (20 ILCS 3805/4.1);
4. the Asbestos Abatement Finance Act, 20 ILCS 3510/0.01, *et seq.* (20 ILCS 3510/9);
5. the Southwestern Illinois Development Authority Act, 70 ILCS 520/1, *et seq.* (70 ILCS 520/11.1); and
6. the Quad Cities Regional Economic Development Authority Act, 70 ILCS 510/1, *et seq.* (70 ILCS 510/5).

B. Bidder Requirements

1. [4.4] Disclosure

The Illinois Procurement Code, 30 ILCS 500/1-1, *et seq.*, requires disclosures by bidders or vendors for contracts with any state agency. The bidder must disclose past and present associations with the state within the last three years and provide the equivalent of a U.S. Securities and Exchange Commission (SEC) 10-K report. 30 ILCS 500/50-35. If the required disclosures are not made, the contract with the government agency can be voided at the discretion of the state agency. 30 ILCS 500/50-60.

2. [4.5] Discretion of Procurement Officer

The Illinois Procurement Code specifically grants the authority to the particular procurement officer involved to look at the various prohibitions of the statute and make a decision. 30 ILCS 500/50-60, for instance, makes a contract voidable if it resulted from bribery, if there was a conflict of interest, if it was with a felon who was still within five years of completion of his or her sentence, etc.

C. [4.6] Collusion Among Bidders

Several statutes void any contracts in which the bidders have colluded among themselves. The mere statement of the principle summarizes the statute. For example, the Rockford Civic Center Law of 1997, 70 ILCS 200/240-1, *et seq.*, states:

If any collusion occurs among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid a fixed amount or to refrain from bidding or otherwise, the bids of such bidders shall be void. 70 ILCS 200/240-50.

The following statutes within the Civic Center Code, 70 ILCS 200/1-1, *et seq.*, contain similar “collusion among bidders” provisions:

1. the Will County Metropolitan Exposition and Auditorium Authority Law of 1997, 70 ILCS 200/280-1, *et seq.* (Article 280 of the Civic Center Code) (70 ILCS 200/280-80);
2. the Illinois Quad City Civic Center Authority Law of 1997, 70 ILCS 200/215-1, *et seq.* (Article 215 of the Civic Center Code) (70 ILCS 200/215-55);
3. the Pekin Civic Center Authority Law of 1997, 70 ILCS 200/200-1, *et seq.* (Article 200 of the Civic Center Code) (70 ILCS 200/200-50);
4. the Metropolitan Civic Center Law of 1997, 70 ILCS 200/170-1, *et seq.* (Article 170 of the Civic Center Code) (70 ILCS 200/170-50); and
5. the standard civic center provisions statute (Article 2 of the Civic Center Code) (70 ILCS 200/2-128).

See also §24 of the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1, *et seq.*

D. [4.7] Not Budgeted and Appropriated

Several statutes require the particular board or authority in charge budget the money for the contract and appropriate the amount. If they have not, the contract is void.

For example, in the Chicago Park District Act, 70 ILCS 1505/0.01, *et seq.*, this limitation is made very explicit. 70 ILCS 1505/17(i) states: “No contract shall be made or expense or liability incurred . . . , unless an appropriation for the contract, expense, or liability has been previously made by the commission in the manner provided in [§17]. . . . Any contract, verbal or written, made in violation of this Section shall be null and void as to the district, and no moneys belonging to the district shall be paid on the contract.”

The following statutes similarly require both budgeting and appropriation and declare void any contract for which such requirements have not been met:

1. the School Code, 105 ILCS 5/1-1, *et seq.* (105 ILCS 5/34-49);
2. the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.* (65 ILCS 5/8-1-7);

3. the Public Community College Act, 110 ILCS 805/1-1, *et seq.* (110 ILCS 805/7-14); and
4. the Counties Code, 55 ILCS 5/1-1001, *et seq.* (55 ILCS 5/6-24008).

Section 8-1-7 of the Municipal Code is one of the few “voiding” statutes that has reported litigation. The majority of the reported cases involve police officers. For example, in *Chicago Patrolmen’s Ass’n v. City of Chicago*, 56 Ill.2d 503, 309 N.E.2d 3 (1974), the Chicago Patrolmen’s Association and certain individual members of the Chicago Police Department sued the City of Chicago in a class action, alleging they were entitled to certain “step” and “longevity” salary increases (*i.e.*, increases based on job classification or seniority). Because there was no appropriation for such step and longevity increases during the year for which the plaintiffs sought to recover (1972), there could be no contract between the city and the plaintiffs, as such contracts are void under §8-1-7 of the Municipal Code. Thus, the plaintiffs’ equitable estoppel theory was rejected, as any reliance by the plaintiffs was not justified. 309 N.E.2d at 6.

E. [4.8] Contracts Must Conform to Statutes, Ordinances, Rules, and Regulations

One of the dangers of dealing with a governmental body is its limited discretion and the difficulty in finding and interpreting the sources defining its authority. The statutes listed below require the applicable governmental body act in accordance with its authority or its contracts are void. For example, the Kankakee River Valley Area Airport Authority Act, 70 ILCS 15/1, *et seq.*, states: “All purchases, contracts or other obligations or expenditures of funds by the Authority must be in accordance with rules and regulations governing the Authority’s procurement practice and procedures.” 70 ILCS 15/11(a). The authority is supposed to adopt and publish the rules. *Id.* Any contract not in compliance is void. 70 ILCS 15/11(b).

The following statutes all declare a contract void if it is made in violation of the terms of the statute and its rules and regulations:

1. the Toll Highway Act, 605 ILCS 10/1, *et seq.*, which promotes safe vehicular access, voids any contract made in violation of the Act or the rules and regulations thereunder, and generally provides for bidding except in certain circumstances (605 ILCS 10/16.1);
2. the Counties Code voids any contract made by an office, department, institution, or agency of a county government to purchase that is contrary to the purchasing provisions of the Code or the rules and regulations made thereunder (55 ILCS 5/5-36008);
3. the Kankakee River Valley Area Airport Authority Act, which promotes safe and convenient air travel, provides that any contract made in violation of the Act or any rule or regulation made thereunder is void (70 ILCS 15/11(b));
4. the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act, 30 ILCS 535/1, *et seq.*, which requires state agencies to hire qualified architects, engineers, and surveyors under a certain procedure, makes contracts made in violation of the Act void and unenforceable (30 ILCS 535/70); and

5. the Metropolitan Water Reclamation District Act, 70 ILCS 2605/1, *et seq.*, provides that any purchase order or contract executed in violation of the Act is null and void, and any public funds that have been expended can be recovered (70 ILCS 2605/11.22).

Some statutes declare void or voidable certain provisions or specific acts instead of a blanket prohibition against any contract violating any provision, rule, or regulation.

1. Under the Counties Code, the Cook County commissioners may not delegate letting contracts of over \$2,500. If this occurs, the contract or expenditure of money is void. 55 ILCS 5/2-6010.

2. Under the International Anti-Boycott Certification Act, 30 ILCS 582/1, *et seq.*, if a contractor with the state does not certify that it will not participate in an international boycott, the state agency involved may “at its option” void the contract. 30 ILCS 582/10.

3. The Unified Code of Corrections, 730 ILCS 5/1-1-1, *et seq.*, voids any contract or agreement violating Article 12 of Chapter III of the Code, which deals with compensating prisoners and selling the fruits of a prisoner’s production in making contract leases and business agreements. 730 ILCS 5/3-12-10.

4. For purchasing and public works contracts in cities of more than 500,000 inhabitants, the Municipal Code voids requests for purchase unless executed by a properly designated officer or employee and the municipality’s purchasing agent. 65 ILCS 5/8-10-6.

5. For counties with fewer than 250,000 inhabitants, the Counties Code voids any bond issued by a county board to fund a judgment prior to December 31, 1959. The bonds must comply with the Counties Code, or the sale is void. 55 ILCS 5/6-14001.

F. [4.9] Miscellaneous Provisions

There are some other provisions that are really not in any specific category. For example, the Prevailing Wage Act, 820 ILCS 130/0.01, *et seq.*, voids any public works contract that does not pay the prevailing wage. 820 ILCS 130/11.

The Illinois Educational Labor Relations Act, 115 ILCS 5/1, *et seq.*, voids any provision in a collective-bargaining agreement that attempts to negatively affect employee rights, guarantees, or privileges provided to employees under Illinois law. 115 ILCS 5/10(b).

Under the Governor’s Office of Management and Budget Act, 20 ILCS 3005/0.01, *et seq.*, any application for federal funds by most state agencies is void unless a copy of the application is approved by the Governor’s Office of Management and Budget. 20 ILCS 3005/5.1. The Act specifically says that the application is void and that the money, if any is received, will be returned. *Id.*

G. [4.10] Acts Exempting Certain Government Actions from the Voiding Provisions

There are three statutes that allow the municipal government involved to cure a defect by passing a new law, special assessment, or tax or issuing a bond if the implementing authority for the old one is declared invalid:

1. The Sanitary District Act of 1936, 70 ILCS 2805/0.1, *et seq.*, allows a sanitary district to cure a void ordinance assessing a special assessment or special tax if the old one is declared void for any reason. 70 ILCS 2805/68.
2. The Sanitary District Act of 1917, 70 ILCS 2405/0.1, *et seq.*, like §68 of the 1936 Act, allows a sanitary district to cure by a new enactment. 70 ILCS 2405/22a.30.
3. The Municipal Code allows a bad ordinance for special assessment or a special tax to be cured by a new one. 65 ILCS 5/9-2-73.

The Chicago Park District Working Cash Fund Act, 70 ILCS 1510/0.01, *et seq.*, generally exempts Chicago Park District commissioners from the conflict of interest rules applicable to other governmental actors. The commissioner need only disclose any pecuniary interest and abstain from voting on the contract. 70 ILCS 1510/16. Similarly, under the Industrial Project Revenue Bond Act, 65 ILCS 5/11-74-1, *et seq.* (Article 11, Division 74, of the Municipal Code), an industrial revenue bond may not be voided because a member of the corporate authority has a pecuniary interest in the contract. 65 ILCS 5/11-74-14. Here too, the member is required only to disclose the nature of his or her pecuniary interest and abstain from voting on the issue. *Id.*

III. [4.11] REAL ESTATE CONTRACTS OR LEASES

Several statutes in the real estate arena further the principle of disclosure by mandating certain clauses or information be included in the sale of an interest in real estate or made available for persons interested in the real estate.

A. [4.12] Condominium Property Act

The Condominium Property Act, 765 ILCS 605/1, *et seq.*, sets out the contents of the documents required to form a condominium, to operate an association, and to sell a unit. The Act generally declares that if any term in a “condominium instrument” conflicts with the provisions required in the Act, the term is void. 765 ILCS 605/2.1. “Condominium instruments” include all documents recorded pursuant to the Act, including the declaration, bylaws, and plat. 765 ILCS 605/2(l).

A prospective buyer of a condominium must be given certain information. The buyer has five days from the date of the last document received to void any existing contract for sale. 765 ILCS 605/22(e). The documents that must be provided include the declaration, bylaws, articles, any assessments, any budget for future improvement that might result in an assessment, dues, existing assessments, etc. 765 ILCS 605/22.

Certain records must be kept by the association and made available to its members. 765 ILCS 605/19(a), 605/19(b). If any document of the condominium association provides that these records do not have to be kept or do not have to be given to members, it is void. 765 ILCS 605/19(h).

The Condominium Property Act spells out the required parts and subjects for the bylaws of any condominium association and the required parts and subjects for corporation documents of a master association. 765 ILCS 605/18, 605/18.5. The bylaws must touch on and provide for the elements listed in §18, including the powers and duties of the board, the number of officers, quorums, elections, indemnification, and similar items. 765 ILCS 605/18. Several sections of the Act declare void any instruments that deviate from the statutory scheme. See, *e.g.*, 765 ILCS 605/18 (contents of bylaws), 605/8 (agreements to partition common elements), 605/18.4 (powers and duties of board of managers), 605/30 (leases or terminations in condominium conversions); 605/18.5 (dealing with master associations).

B. [4.13] Agreement for Deed or Installment Land Sales

There are two statutes that make an entire land contract voidable.

The first, the Dwelling Unit Installment Contract Act, 765 ILCS 75/0.01, *et seq.*, requires that a contract for the sale of a “dwelling unit” state that the seller warrants that there is no notice that has been received of a dwelling code violation or, if one has been received, that a list of the notices and statements is available to the contract purchaser. 765 ILCS 75/1, 75/2. If this clause is not in the contract for sale, the buyer has the option to void the entire contract. 765 ILCS 75/2.

The second, the Sale of Residential Property Subject to Land Trust Act, 765 ILCS 430/0.01, *et seq.*, requires that if the seller in an installment sale contract is a trust, in addition to the trust signing the contract, the names of the beneficiaries having the power of direction must be disclosed, the trustee must be named, and all must sign the contract. 765 ILCS 430/2. The buyer has the option to void the contract if this is not done. *Id.*

C. [4.14] Clause Prohibiting or Penalizing Recording Real Estate Contract

The Dwelling Structure Contract Act, 765 ILCS 70/0.01, *et seq.*, voids any provision in a real estate contract for a “dwelling structure” that forbids recording it, provides that the recording shall not constitute notice, or provides any penalty for recording. 765 ILCS 70/2.

D. [4.15] Timeshare Sale Not Complying

Similar to other disclosure acts, the Real Estate Timeshare Act of 1999, 765 ILCS 101/1-1, *et seq.*, gives a prospective purchaser or contract purchaser of a “time share interest” five days after receipt of the public offerings statement or signing of the contract, whichever is later, to void the sale. 765 ILCS 101/10-10.

E. [4.16] Acts That Void Leases

Under the forcible entry and detainer statute (Article IX of the Code of Civil Procedure, 735 ILCS 5/1-101, *et seq.* (see 735 ILCS 5/9-101, *et seq.*)), when the leased premises are used in furtherance of a felony or Class A misdemeanor, the lease is void at the option of the lessor or an assignee. 735 ILCS 5/9-120(a).

Similarly, the Landlord and Tenant Act, 765 ILCS 705/0.01, *et seq.*, permits a landlord to declare a lease void if the lessee or occupant is charged with a Class X felony committed on the premises after a judicial finding of probable cause or indictment by a grand jury. 765 ILCS 705/5(a).

The Lewdness Public Nuisance Act, 740 ILCS 105/0.01, *et seq.*, allows the owner to void any lease with a tenant who uses the premises or permits the premises to be used for “lewdness, assignation or prostitution.” 740 ILCS 105/10.

F. [4.17] Property Taxes of Alien Landlords Act

There is an 1887 statute, the Property Taxes of Alien Landlords Act, 765 ILCS 725/0.01, *et seq.*, that prohibits an “alien landlord” from agreeing with a tenant who is farming or raising crops on the land that the tenant pays the taxes on the land. It provides that the tenant can get the money back. 765 ILCS 725/1.

G. [4.18] Undisclosed Principal and the Chicago Board of Education

The Chicago Board of Education is prohibited from consummating any transaction involving the transfer of real estate or an interest in it if there is an undisclosed principal. If the board sells real estate and there is an undisclosed principal, the transaction is void, and the board gets the land back and keeps any money it received as liquidated damages. 105 ILCS 5/34-21(d)(3).

H. [4.19] Mortgage Rescue Fraud Act

Effective January 1, 2007, the Mortgage Rescue Fraud Act, 765 ILCS 940/1, *et seq.*, is aimed at the persons or organizations that prey on homeowners in difficulty. It makes any agreement with a “distressed property consultant” or a “distressed property purchaser” subject to its provisions. Any waiver of the provisions of the Act is declared void. 765 ILCS 940/20.

The distressed property consultant is required to provide a written notice containing statutory provisions with a form notice of cancellation. One of the prohibitions is that the consultant cannot “[t]ake any money from you or ask you for money” until the consultant has fully performed. 765 ILCS 940/10. Similarly, a contract to convey a distressed property must be in writing (765 ILCS 940/25) and contain certain provisions (765 ILCS 940/30) and a notice about the right to cancel it (765 ILCS 940/30, 940/35, 940/40). Any waiver of §§35 and 40 is void. 765 ILCS 940/45.

IV. STATUTES DIRECTED AT SPECIFIC BUSINESSES

A. [4.20] Particular Business Rules

There are special statutes directed at specific businesses that are similar in structure. They require a written contract with the customer, cost disclosure, and rescission rights. The statutes declare that any waiver in the contract of statutory rights is void and that any of the acts prohibited by statute will void the contract.

1. [4.21] Hearing Instrument Consumer Protection Act

Under the Hearing Instrument Consumer Protection Act, 225 ILCS 50/1, *et seq.*, a mail order consumer who buys, leases, or contracts to buy a “hearing instrument” has 45 business days from the date on which the hearing instrument was mailed to give notice of cancellation and void the contract for a sale. 225 ILCS 50/6(g).

2. [4.22] Physical Fitness Services Act

The Physical Fitness Services Act, 815 ILCS 645/1, *et seq.*, voids a contract for physical fitness services if it was entered into based on false, fraudulent, or misleading information. 815 ILCS 645/10(b). Any provision in the customer contract waiving the requirements of the Act is void. 815 ILCS 645/9(b).

In *Pulcini v. Bally Total Fitness Corp.*, 353 Ill.App.3d 712, 820 N.E.2d 31, 289 Ill.Dec. 523 (1st Dist. 2004), the court allowed a cause of action filed by two fitness center customers against Bally Total Fitness Corporation to proceed on the basis that the fitness contracts violated the Act’s provisions regarding automatic contract renewals in §8. See 815 ILCS 645/8(c).

3. [4.23] Dating Referral Services Act

The Dating Referral Services Act, 815 ILCS 615/1, *et seq.*, makes any contract that does not comply with the provisions of the Act void and unenforceable. 815 ILCS 615/35(c). Among the Act’s prohibitions are contracts in excess of three years, contracts measured by the life of the customer, and renewal fees of less than ten percent of the initial term. 815 ILCS 615/30. Any false representations by the dating service will void the contract. 815 ILCS 615/40(b).

4. [4.24] Dance Studio Act

The Dance Studio Act, 815 ILCS 610/1, *et seq.*, requires that there be a written contract that sets out the total payment obligation and the hourly charge. 815 ILCS 610/4, 610/5. Anything not charged hourly must be specifically described. 815 ILCS 610/5. The contract must be cancelable, and upon cancellation, all monies except those already earned by the studio must be returned within 30 days. 815 ILCS 610/6. The contract cannot be longer than one year from the date the contract was executed, and the term of the contract cannot be measured by the life of a customer. 815 ILCS 610/7(b). Nonrecourse notes and deceptive trade practices are not permitted. 815 ILCS 610/7(c), 610/9(a). Any contract noncompliant with the Act is void and unenforceable. 815 ILCS 610/8(c).

5. [4.25] Illinois Fair Invention Development Standards Act

The Illinois Fair Invention Development Standards Act, 815 ILCS 620/101, *et seq.*, makes unenforceable and void a contract for invention development services that does not comply with the Act. 815 ILCS 620/502. The contract is void if the customer entered into it in reliance on false information from the invention developer. 815 ILCS 620/503. There are certain disclosures required by the invention developer set out in Article II of the Act. The invention developer can attempt to prove that its noncompliance with the Act was unintentional and resulted from a bona fide error. 815 ILCS 620/502.

6. [4.26] Illinois Loan Brokers Act of 1995

The Illinois Loan Brokers Act of 1995, 815 ILCS 175/15-1, *et seq.*, provides that a contract with a loan broker is void if the loan broker violates any provisions of the Act. 815 ILCS 175/15-60. It is a comprehensive statute, requiring registration and reporting and prohibiting fraud, and penalties for noncompliance are severe.

Carlisle Investments Group, Ltd. v. White, 366 Ill.App.3d 876, 852 N.E.2d 393, 304 Ill.Dec. 143 (1st Dist. 2006), exemplifies a party's noncompliance pursuant to the Loan Brokers Act. Carlisle Investments Group, Ltd., entered into a consulting agreement with a property owner to administer financing for a redevelopment project. 852 N.E.2d at 395. The Illinois Secretary of State determined that Carlisle violated the Loan Brokers Act because it had failed to register in compliance with the Act and failed to comply with a subpoena directing them to submit financial records. The court imposed a permanent order prohibiting Carlisle from acting as a loan broker and required the payment of monetary penalties. 852 N.E.2d at 394 – 395. Carlisle appealed and argued that it was exempt from the Act because the company was not in the business of loan brokering. 852 N.E.2d at 399 – 400. The First District disagreed and held that, as a matter of law, Carlisle's employees were acting as loan brokers within the meaning of the statute. *Id.* The court reasoned that the agreement between Carlisle and the client was clearly a loan brokering agreement. Further, §15-10 of the Loan Brokers Act states that it is unlawful for any person to engage in the business of loan brokering unless registered under the Act. 815 ILCS 175/15-10. Thus, Carlisle's failure to comply with the subpoena directing that financial records be submitted was a direct violation of the Act, and the judgment was affirmed. 852 N.E.2d at 400 – 401.

7. [4.27] Illinois Securities Law of 1953

The Illinois Securities Law of 1953, 815 ILCS 5/1, *et seq.*, makes voidable all sales made in violation of the statute at the election of the purchaser. 815 ILCS 5/13A. When there is such a violation and the purchaser elects to void the agreement, all persons involved in the sale are jointly and severally liable to the purchaser for the full amount paid plus interest. *Id.*

8. [4.28] Credit Services Organizations Act

The Credit Services Organizations Act, 815 ILCS 605/1, *et seq.*, voids any contracts for credit services (any services that promise to improve a person's credit or get a buyer an extension of credit) that do not comply with the Act or attempt to waive any provisions of the Act. 815 ILCS 605/5, 5/8.

9. [4.29] Illinois Pre-Need Cemetery Sales Act

The Illinois Pre-Need Cemetery Sales Act, 815 ILCS 390/1, *et seq.*, voids any provision in a contract that attempts to waive any provisions of the Act. 815 ILCS 390/25. The Act deals with pre-need sales of cemetery services, spaces, plots, and other pre-need subjects. 815 ILCS 390/2.

10. [4.30] Illinois Business Brokers Act of 1995

Under the Illinois Business Brokers Act of 1995, 815 ILCS 307/10-1, *et seq.*, if a business broker fails to register with the state, renew its registration, or give the required disclosures, not only is it liable for damages, interest, and attorneys' fees, but its contract is void and it must return all fees paid to it with interest and attorneys' fees. 815 ILCS 307/10-60.

B. Miscellaneous Statutes Targeting Particular Business Transactions

1. [4.31] Motor Vehicle Leasing Act

Under the Motor Vehicle Leasing Act, 815 ILCS 636/1, *et seq.*, any security interest in connection with a motor vehicle lease that creates a security interest in personal or real property of the lessee to secure payment of the obligations is void. 815 ILCS 636/30(b). If an automobile dealer or retailer makes a lease for an automobile, it cannot take anything else as additional security other than the vehicle. The additional security is void, not the lease. *Id.*

2. [4.32] Illinois Equipment Fair Dealership Law

The Illinois Equipment Fair Dealership Law, 815 ILCS 715/1, *et seq.*, governs the relationship between a heavy equipment retailer and its wholesaler. 815 ILCS 715/3. Besides voiding any contract in its entirety that is made in violation of the statute (815 ILCS 715/10), it defines their relationship. For instance, if the wholesaler decides to terminate the relationship with the heavy equipment retailer, the wholesaler is required to purchase the inventory from the retailer. 815 ILCS 715/4. The wholesaler is also required to pay for warranty work. 815 ILCS 715/4.5.

3. [4.33] Consignment of Art Act

The Consignment of Art Act, 815 ILCS 320/0.01, *et seq.*, lists those things that must be in a contract in order for there to be a legal consignment with an art dealer. 815 ILCS 320/2. The Act allows an artist to seek relief in a court of competent jurisdiction to have the agreement voided. 815 ILCS 320/5(3). The Act's requirements include a trust/agent relationship between the artist and dealer and time frames for payment to the artist. 815 ILCS 320/2.

4. [4.34] Construction Contract Indemnification for Negligence Act

Under the Construction Contract Indemnification for Negligence Act (sometimes called the Anti-Indemnification Act), 740 ILCS 35/0.01, *et seq.*, no construction contract may contain a clause that indemnifies a party for that party's own negligence. 740 ILCS 35/1. A construction contract is one for "construction, alteration, repair or maintenance" of any structure or other construction work. *Id.*

In *Virginia Surety Co. v. Northern Insurance Company of New York*, 224 Ill.2d 550, 866 N.E.2d 149, 310 Ill.Dec. 338 (2007), the Illinois Supreme Court held that the Anti-Indemnification Act did not prohibit a subcontractor's agreement to indemnify the general contractor and hold it harmless to the fullest extent permitted by law for claims arising out of the subcontractor's work. The purpose of the Anti-Indemnification Act is to foster workplace safety by preventing a party from insulating itself from liability through the use of a contractual indemnification provision that may deter the exercise of ordinary care. 866 N.E.2d at 155 – 156. While the contract at issue provided for indemnification “regardless of whether or not such claim, loss, or expense is caused in part by a party indemnified hereunder,” the court held that under a complete reading of the contractual language, this clause was merely a poorly worded “contribution” provision, as both parties remained jointly and severally liable for any injuries to third persons. 866 N.E.2d at 159.

5. [4.35] Health Care Arbitration Act

The Health Care Arbitration Act, 710 ILCS 15/1, *et seq.*, provides certain protections to patients who are asked to execute a contract that provides for arbitration in lieu of court remedies. The Act requires that the agreement not be a condition to the rendering of healthcare services and that it be a separate instrument and not part of any other contract. 710 ILCS 15/8. Further, the agreement may not limit, impair, or waive any substantive or due-process rights of the patient. Finally, the agreement must be executed by the patient at the inception of or during the term that services are provided, and as part of the discharge process, the patient (or members of his or her family as appropriate) must be given a copy of the previously executed agreement, and it must be reaffirmed at that time. Failure to comply with the discharge procedure voids the healthcare arbitration agreement. *Id.*

6. [4.36] Legal Business Solicitation Act

The Legal Business Solicitation Act, 705 ILCS 210/0.01, *et seq.*, prohibits non-attorneys from soliciting “for money, fee, commission, or other remuneration” any demand or claim for personal injuries. 705 ILCS 210/1. Any purported contract between a lawyer and a nonlawyer in violation of this Act is void and unenforceable. 705 ILCS 210/3.

The cases interpreting the Legal Business Solicitation Act generally condemn as unlawful solicitation the drumming up or procurement of legal business by inducing potential clients who have not initiated contact with the attorney to engage as their lawyer the attorney that the solicitor recommends. *See, e.g., Rhoades v. Norfolk & Western Ry.*, 78 Ill.2d 217, 399 N.E.2d 969, 972, 35 Ill.Dec. 680 (1979). In *Rhoades*, the Illinois Supreme Court held that on the facts of that case, an investigator, acting on behalf of a law firm, who visited an injured railroad worker, was not in violation of the Act. 399 N.E.2d at 972 – 973. There was no indication of a scheme to coerce the injured person into retaining the law firm, as the investigator provided “only general, nontechnical answers” to the injured individual's questions and did not “seek out a client or stir up litigation.” 399 N.E.2d at 973.

7. [4.37] Illinois Commercial Transportation Law

Under the Illinois Commercial Transportation Law, 625 ILCS 5/18c-1101, *et seq.* (Chapter 18c of the Illinois Vehicle Code, 625 ILCS 5/1-100, *et seq.*), if a shipper and motor carrier agree that a straight bill of lading is nonnegotiable, it must be stated in writing on the face of the bill. 625 ILCS 5/18c-4803. Any provision that violates these requirements is void. *Id.*

8. [4.38] Debt Management Service Act

Under the Debt Management Service Act, 205 ILCS 665/1, *et seq.*, any debt management service contract is void unless the person is licensed. 205 ILCS 665/16(b).

9. [4.39] Building and Construction Contract Act

Under the Building and Construction Contract Act, 815 ILCS 665/1, *et seq.*, any provision in connection with a building or construction contract to be performed in Illinois that makes the contract subject to the laws of another state or requires litigation or dispute resolution in another state is void and unenforceable. 815 ILCS 665/10.

V. INSURANCE

A. [4.40] Insurance Contracts

Contracts of insurance issued in Illinois must follow the Illinois Insurance Code, 215 ILCS 5/1, *et seq.* In effect, the Insurance Code becomes part of the contract regardless of whether it is in the contract. Some specific provisions set forth in §§4.41 – 4.43 below work to void specific provisions in insurance contracts.

1. [4.41] Workers' Occupational Diseases Act

The Workers' Occupational Diseases Act, 820 ILCS 310/1, *et seq.*, voids any provision in a policy of insurance or endorsement to it that attempts to limit or modify in any way the liability of the insurance carrier issuing it. 820 ILCS 310/4(a)(3).

2. [4.42] Illinois Vehicle Code

Under the Illinois Vehicle Code, any agreement between the insured and the insurer that the policy may be cancelled or annulled after there has been a loss or damage for which the insured has become responsible is void. 625 ILCS 5/7-317(f)2.

3. [4.43] Managed Care Reform and Patient Rights Act

Provisions in a healthcare plan or contract that change any of the rights set forth in the Managed Care Reform and Patient Rights Act, 215 ILCS 134/1, *et seq.*, are void. 215 ILCS 134/100. The Act discusses many requirements including provision of services, quality assurance, disclosure, and other patient rights.

B. Miscellaneous Provisions Pursuant to the Illinois Insurance Code

1. [4.44] Public Insurance Adjusters

Any public adjuster's agreement made within five days of a loss is void. The person who executed it has ten days from the date of execution to void it. 215 ILCS 5/512.58(a). Further, any provision in the public adjuster agreement giving the public insurance adjuster a power of attorney or hold-harmless is void. 215 ILCS 5/512.58(b).

2. [4.45] Fraternal Benefit Societies

Every fraternal benefit society authorized to do business in Illinois is required to issue to each owner of a benefit contract a certificate in writing specifying the amount of benefits provided. If this certificate, or any riders or endorsements to it, waives any of the documentary requirements of the Illinois Insurance Code for membership in the society, the waiver is void. 215 ILCS 5/300.1(a).

3. [4.46] Insurance Holding Company Systems

The Director of Insurance can void a contract between a domestic insurance company and its holding company that would not have been approved had the approval been requested or would have been disapproved had the notice required by the Illinois Insurance Code been given. 215 ILCS 5/131.24(2).

4. [4.47] Urban Property Insurance

215 ILCS 5/525.4 is aimed at redlining. This particular statute provides that the insurance issued by the urban property insurance administrator may be voided if the property is held in a land trust and all the beneficial interests are not disclosed and updates are not given as changes are made. 215 ILCS 5/525.4(2).

VI. EMPLOYMENT

A. [4.48] Sales Representative Act

No provision in a contract with an independent sales representative can waive the provisions of the Sales Representative Act, 820 ILCS 120/0.01, *et seq.* 820 ILCS 120/2. All commissions due at the time of termination of a sales representation agreement must be paid within 13 days of termination, and commissions that become due after termination must be paid within 13 days of the date on which they become due. Any provision in any contract between a sales representative and principal purporting to waive any of the provisions of the Act is void. *Id.*

B. [4.49] Wages of Women and Minors Act

Under the Wages of Women and Minors Act, 820 ILCS 125/0.01, *et seq.*, any employment agreement with a woman or minor is null and void if it has an “oppressive and unreasonable wage” as defined in §1 of the Act. 820 ILCS 125/2.

C. [4.50] Minimum Wage Law

The Minimum Wage Law, 820 ILCS 105/1, *et seq.*, makes an agreement to pay an employee less than the amount fixed in the Minimum Wage Law void. 820 ILCS 105/2.

D. [4.51] Illinois Educational Labor Relations Act

Under the Illinois Educational Labor Relations Act, a provision in a collective-bargaining agreement that has the effect of “negating, abrogating, replacing, reducing, diminishing or limiting in any way any employee rights, guarantees or privileges provided in an Illinois statute or statutes shall be void and unenforceable.” 115 ILCS 5/10(b).

E. [4.52] Workers’ Compensation Act

Under the Workers’ Compensation Act, 820 ILCS 305/1, *et seq.*, a contract of employment requiring the employee to pay any of his or her own premiums for workers’ compensation insurance is null and void. 820 ILCS 305/4(g).

F. [4.53] Burial Rights Act

The Burial Rights Act, 820 ILCS 135/0.01, *et seq.*, makes void any agreement between a cemetery authority and the cemetery workers’ association that totally prohibits burials on Sundays or legal holidays. 820 ILCS 135/1(a).

G. [4.54] Employment Contract Act

The Employment Contract Act, 820 ILCS 15/1, *et seq.*, makes void any agreement between an employer and an employee in which the employee agrees to not join a union or that provides that upon joining a union the employment will terminate. 820 ILCS 15/1.

H. [4.55] State Prohibition of Goods from Child Labor Act

The State Prohibition of Goods from Child Labor Act, 30 ILCS 584/1, *et seq.*, requires that every contract entered into by any state agency for the procurement of equipment, materials, or supplies (other than one related to a public works contract) must specify that no foreign-made goods are produced in whole or in part by labor of any child under the age of 12. 30 ILCS 584/10. The contract is voidable at the election of the state agency among other remedies including fine and suspension from bidding. *Id.*

VII. MISCELLANEOUS

A. [4.56] Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985

The Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985, 225 ILCS 410/1-1, *et seq.*, provides that any provision in a barber or cosmetology school enrollment agreement (which the Act requires) or a student contract that purports to waive the right to assert any claim or defense against the school is void. 225 ILCS 410/3B-12(e).

B. [4.57] Guardians for Adults with Disabilities

The Probate Act of 1975, 755 ILCS 5/1-1, *et seq.*, provides that a contract made with a person who has had a plenary guardian appointed or who is adjudged to be unable to so contract is void as against that person and his or her estate, but any other person signing is bound. 755 ILCS 5/11a-22(b).

C. Uniform Commercial Code

1. [4.58] Leases

Under the Uniform Commercial Code, 810 ILCS 5/1-101, *et seq.*, creditors may treat a lease or sale as void if, as against the creditor, retention of possession by the seller or lessor is fraudulent under any statute or rule of law. 810 ILCS 5/2A-308(1).

2. [4.59] Creditors

The Uniform Commercial Code provides that a creditor of a seller with respect to goods that have been identified to the contract for sale may treat the sale as void if, as against him or her, a retention of possession by the seller is fraudulent under any rule of law. 810 ILCS 5/2-402(2).

3. [4.60] Remedies

The liquidated damages provision of the Uniform Commercial Code states: “A term fixing unreasonably large liquidated damages is void as a penalty.” 810 ILCS 5/2-718(1).

D. [4.61] Illinois Marriage and Dissolution of Marriage Act

The Illinois Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/101, *et seq.*, makes void any marriage by a party residing or intending to continue to reside in another state if the marriage would be void under the other state’s law. 750 ILCS 5/217. The IMDMA also makes void any marriage contracted in a different state or country that would be prohibited in this state. 750 ILCS 5/216.

E. [4.62] Criminal Code of 2012; Gambling

The Criminal Code of 2012, 720 ILCS 5/1-1, *et seq.*, makes void all promises, notes, bills, bonds, etc., executed by any person when the whole or any part of the consideration is for any

money or thing of value won or obtained in violation of the gambling provisions of the Criminal Code (except for the owners of a riverboat gambling operation who can sue if they extended credit to a patron). 720 ILCS 5/28-7(a), 5/27-8(d). *See Cie v. Comdata Network, Inc.*, 275 Ill.App.3d 759, 656 N.E.2d 123, 211 Ill.Dec. 931 (1st Dist. 1995), which makes clear that the debt must be for gambling. In *Cie*, the betting operation had a place where cash advances could be obtained on a credit card. After the gamblers lost, one of them defended the credit card debt by citing §28-7(a). The court denied the defense, finding that there was a loan transaction. 656 N.E.2d at 129.

F. [4.63] Liquor Control Act of 1934

Under the Liquor Control Act of 1934, 235 ILCS 5/1-1, *et seq.*, a person licensed to sell liquor at retail entering into an agreement with a manufacturer, distributor, or importer not to sell the products of others renders the entire agreement void. 235 ILCS 5/6-23.

If a manufacturer, importer, or distributor of alcoholic liquors furnishes money to pay for a license for another person licensed under the Act, the furnisher cannot recover this money and is guilty of a violation of the Act, and any agreement or security to recover the money is unenforceable and void. 235 ILCS 5/6-6.

G. [4.64] Public Utilities Act

The Public Utilities Act, 220 ILCS 5/1-101, *et seq.*, makes void every contract or arrangement not consented to or accepted by the Illinois Commerce Commission (ICC) when the contract is made with an “affiliated interest.” 220 ILCS 5/7-101(3). There are exceptions and exemptions. “Affiliated interests” range from owning ten percent or more of the public utility’s stock to being officers and directors of the utility. 220 ILCS 5/7-101(2).

In *Estate of Besinger v. Village of Carpentersville*, 258 Ill.App.3d 218, 630 N.E.2d 178, 196 Ill.Dec. 481 (2d Dist. 1994), however, the court refused to void a contract despite the fact that it had not been filed with or consented to by the ICC. The purpose of the voiding provision is to protect those who might be affected by improper transactions, not to aid a third party (in this case, the Village of Carpentersville) who did not wish to be bound by a contract. 630 N.E.2d at 183 – 184.

The Public Utilities Act also makes void any of certain enumerated transactions that are not authorized by §7-102 or the ICC. Generally, the list of such prohibited transactions includes making agreements with other public utilities and selling or encumbering significant assets. 220 ILCS 5/7-102.

H. [4.65] Drycleaner Environmental Response Trust Fund Act

The Drycleaner Environmental Response Trust Fund Act, 415 ILCS 135/1, *et seq.*, provides for the Drycleaner Environmental Response Trust Fund, from which certain owners, operators, or claimants may receive money from the state for remedial action. 415 ILCS 135/10. Any contract to remediate when one of the parties to the contract is a claimant who may be payable by the

Drycleaner Environmental Response Trust Fund Council is void and unenforceable unless and until the council has found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and that they are necessary. 415 ILCS 135/40(f)(2).

I. [4.66] Medical Practice Act of 1987

The Medical Practice Act of 1987, 225 ILCS 60/1, *et seq.*, makes void any release prior to or as a condition of medical treatment. 225 ILCS 60/29.

VIII. [4.67] CONCLUSION

As can be seen from the discussion in this chapter, there are few cases interpreting the statutes that void or make voidable contracts under Illinois law. This chapter may serve as a reminder, however, of various statutory provisions in specific fields of law that may aid in the drafting of contracts or litigation that arises therefrom. As stated in the introduction, this chapter does not include common-law declarations of policy that would void a contract or provisions therein.

