

Subject: Kelleher & Buckley, LLC - Illinois 2011 Legislation

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Kelleher & Buckley, LLC

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-Law Update-

Illinois 2011 Legislation

Please feel free to contact us with any questions or referrals.

Illinois Estate tax

Public Act 96-1496

Reinstated the Illinois estate tax with a \$2,000,000 exemption. This Act also re-established the Illinois terminable interest property laws. Effective January 1, 2011.

Transfer on death instrument

Public Act 97-555

Creates the Illinois Residential Real Property Transfer on Death Instrument Act. It allows an owner of real estate to transfer residential property on his or her death. The definition of "residential property" is borrowed from the Disclosure Act and the

Mortgage Foreclosure Act. The act requires that the owner (1) sign in front of a notary and two credible witnesses and (2) have the same mental capacity to execute a TODI as is required to make a will. Effective January 1, 2012.

New Medicaid Regulations

The Illinois Department of Healthcare and Family Services has adopted new regulations implementing the Federal Deficit Reduction Act of 2005, PL 109-171 ("DRA 2005"). The new state regulations, passed in response to the 2005 federal requirements, make it harder for nursing home care recipients to both shelter assets and stay eligible for Medicaid. Effective January 1, 2012.

Mental Health Records

Public Act 97-614

Amends the Mental Health and Developmental Confidentiality Act for release of records and communications to certain court-appointed mental health professionals for fitness hearing in criminal cases. Effective January 1, 2012.

Temporary Guardianships

Public Act 97-566

Allows a temporary guardian to be appointed by the court if a guardian dies, becomes incapacitated or resigns. Requires the court to state the actual harm that makes any extension of a temporary guardianship ("TG") necessary. If there has been an adjudication of disability, an extension of a TG may be granted only in certain circumstances. If there has not been an adjudication of disability, an extension may be granted for up to 120 days if the court finds it is in the best interests of the alleged disabled person so as to protect such person from potential abuse or neglect. Effective January 1, 2012.

Maintenance and life insurance

Public Act 97-608

(Murphy, R-Palatine; Tracy, R-Mt. Sterling) clarifies that existing life insurance policies that are marital property must have their premiums and benefits divided by the courts if the parties can't agree on the division during the dissolution of marriage. It also allows payees to purchase new policies on the life of the payor for new life insurance policies and requires the payor to cooperate with the payee in this effort. Effective January 1, 2012.

Health-Care power of attorney change

Public Act 97-148

Eliminates the recently enacted ability of an agent to have access to the principal's records on execution of the power of attorney. Public Act 97-0148 reverts to prior law that the agent is empowered to get access on an event or time that the patient designates in the statutory short-form. Effective July 14, 2011.

Do-Not-Resuscitate forms

Public Act 97-382

Makes two changes. Requires that the Department of Public Health publish its Uniform DNR Advance Directive form in Spanish, and that the form must meet the national, minimum requirements to be considered a physician's order to be a life-sustaining treatment form. Effective January 1, 2012.

Illinois Personal Information Protection Act

Public Act 97-483

Requires entities that suffer security breaches to notify affected individuals without unreasonable delay. The law now includes several specific requirements for those breach notification letters. "The disclosure notification to an Illinois resident shall include, but need not be limited to, (i) the toll-free numbers and addresses for consumer reporting agencies, (ii) the toll-free number, address, and website address for the Federal Trade Commission, and (iii) a statement that the individual can obtain information from these sources about fraud alerts and security freezes. The notification shall not, however, include information concerning the number of Illinois residents affected by the breach." The Act also requires entities to properly dispose of paper documents and electronic data in such a way as to render personal information unreadable or indecipherable. State and local government agencies are subject to the requirements of this Act. Effective January 1, 2012.

Visitation abuse

House Bill 1604

Allows a court to order the following relief for visitation abuse: (1) suspend the defendant's driving privileges; (2) suspend the defendant's professional license; and (3) fine the defendant for not more than \$500 as a petty offense; (4) requires a finding that a party engaged in visitation abuse constitutes "a change in circumstances of the child or his custodian" under Section 610 of the Illinois Marriage and Dissolution Act. It is scheduled for a hearing next week in Senate Judiciary Committee.

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