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ILLINOIS SHOULD EXPLICITLY ADOPT THE PER SE RULE FOR CONSUMER FRAUD ACT VIOLATIONS

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The Illinois Consumer Fraud and Deceptive Business Practices Act ("CFA")[1] provides basic, comprehensive protection for consumers, borrowers, and businessmen against fraud, unfair competition and unfair or deceptive acts or practices in any trade or commerce. The primary purpose of the CFA is to protect consumers against losses caused by overreaching or fraudulent conduct.[2] In addition to the CFA, there are numerous federal and state specialized consumer protection statutes that regulate specific types of activities, such as installment credit purchases,[3] wage assignments,[4] and various trade activities such as dance studios[5] and travel promotion.[6]

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This article examines the integral relationship between these regulatory statutes and the CFA, since a violation of a regulatory statute also may constitute a violation of the CFA. The issue is particularly important where the regulatory statute provides no private cause of action for damages, and the injured consumer must look to the CFA for relief.[7] Other states have adopted a per se violation rule,[8] whereby a violation of any statute designed to protect consumers automatically constitutes a violation of the state's general consumer fraud statute. However, Illinois courts have failed to address the issue comprehensively or consistently. Applying the CFA's liberal construction mandate and the statutorily incorporated FTC standard, Illinois courts should adopt a per se violation rule for CFA violations.

A. States That Have Adopted The Per Se Rule

Statutes similar to the CFA, commonly referred to as "Unfair and Deceptive Acts and Practices" statutes ("UDAPs") are found in almost all states.[9] In some states, a violation of a specific state or federal consumer protection statute is a per se violation of the state UDAP. For example, *Dial Corp v. Manghnani Inv. Corp.*[10] was an action based on violations of the federal Lanham Trade-Mark Act[11] and the Connecticut Unfair Trade Practices Act ("CUTPA").[12] The court first determined that the defendant had violated the federal statute. It then considered the language of the state statute, which provided that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or business."[13] Based on the statute and deceptive trade practice standards set by the Federal Trade Commission,[14] the court expressly adopted the per se rule, stating that "[t]o the extent defendants' actions violated the Lanham Act... they should be held automatically to violate CUTPA."[15]

Winston Realty Co. v. G.H.G., Inc.[16] was an action by an employer against a personnel agency for losses due to embezzlement by an employee recommended by the agency. The plaintiff alleged that defendant had violated Chapter 95 of the North Carolina statutes[17] by publishing and making false and fraudulent representations concerning the applicant, and that such actions also constituted unfair and deceptive trade practices under the state UDAP.[18] After the jury found a violation of the former, the trial court ruled, as a matter of law, that the defendant also had violated the UDAP.

Chapter 95 is enforceable by the North Carolina Commissioner of Labor, but the statute provides no private right of action.[19] However, the North Carolina Supreme Court held that the provisions found in Chapter 95 were designed to protect consumers. It thus held that "[p]roof of fraud [under Chapter 95] necessarily constitutes a violation of the prohibition against unfair and deceptive acts,"[20] and therefore consumers could sue to remedy the fraud.

Similarly, *In re Scrimpsher*[21] involved a counterclaim against a creditor for violations of the federal Fair Debt Collection Practices Act ("FDCPA")[22] and the Consumer Protection From Deceptive Acts and Practices article of the New York General Business Laws.[23] There, the court found that the creditor had violated the FDCPA and that the violation therefore "subjects [the creditor] to concurrent liability under. . . the New York General Business Law."[24]

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In *Salois v. Mutual of Omaha Ins. Co.*,[25] the defendant had violated the insurance code by failing to act in good faith and fair dealing. The Washington Supreme Court specifically stated that "defendant's actions were a per se violation" of the Washington Consumer Protection Act ("WCPA").[26] Like the Illinois CFA, the WCPA prohibits unfair or deceptive acts and practices and

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has expressly incorporated the deceptive trade practices standards set by the FTC.

B. Liberal Construction and the FTC Standard

The CFA makes unlawful all "unfair or deceptive acts or practices including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact...."[27] The Illinois legislature expressly provided that, to affect its intended purpose, courts are to liberally construe CFA provisions.[28] In *Duhl v. Nash Realty,*[29] the court found that the Illinois legislature intended that "the courts of this State utilize the [CFA] to the utmost degree in eradicating all forms of deceptive and unfair business practices and grant appropriate remedies to injured parties."[30]

The Illinois legislature also made it clear that in determining what conduct is prohibited by the CFA, "consideration should be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act,"[31] which also prohibits unfair and deceptive acts and practices. In *FTC v. Sperry & Hutchinson Co.,*[32] the United States Supreme Court adopted the following FTC standards to determine whether an act or practice is unfair or deceptive:

> (1) [W]hether the practice offends public policy as established by statutes, at common law, or otherwise or is within at least the penumbra of some common law, statutory or other established concept of unfairness;
> (2) whether the practice is immoral, unethical, oppressive, or unscrupulous; and
> (3) whether the practice causes substantial injury to consumers or competitors.[33]

For purposes of this discussion the first standard, offending public policy as established by statute, is most pertinent. This standard, statutorily incorporated into the CFA, supports a per se rule: an act is per se unfair if it violates either the letter or the public policy of a statute intended to protect consumers. A per se rule also is consistent with the liberal construction mandate of the CFA. If a statute is intended by the legislature to protect consumers, finding that violating that statute also violates the CFA would "utilize the [CFA] to the utmost degree in eradicating all forms of deceptive and unfair business practices." Under such a per se rule, if the legislature prohibits an act, then performing the act automatically constitutes an unfair or deceptive practice under the CFA. Conversely, if the legislature specifically allows an action, then performing the act does not violate the CFA.

1. Applying the FTC Standard and the Liberal Construction Mandate of the CFA.

Several Illinois courts have properly applied the liberal construction mandate and FTC standard in accordance with this reasoning. While some decisions reflect an express deference to the FTC standards,[34] others have adopted the analysis by implication.[35] In either case, this line of decisions interpreting the CFA has developed with a consistency of reasoning that was intended by the liberal construction mandate of the CFA.

> "[A]n act is per se unfair if it violates either the letter or the public policy of a statute intended to protect consumers."

In *Hurlbert v. Cottier,*[36] the court invoked the liberal construction requirement of the CFA and applied the FTC standard to sustain a cause of action that, on its face, did not meet the requirements of the CFA. There, the defendant had installed aluminum siding on the plaintiff's house. The plaintiff sued to rescind the contract pursuant to Section 262B of the CFA, which provides that under certain circumstances the "consumer may avoid the contract or sale . . . by returning to the seller, in its original condition, any merchandise delivered to him under the contract or sale."[37] The court concluded, however, that the plaintiff could not meet the requirements of section 262B because once the siding was installed, it could not be returned in its original condition.

The court noted that the CFA is to be liberally construed and "that the legislature intended consultation of Federal laws and Federal court decisions generally when the Illinois Statute appears deficient."[38] Extending this reasoning to the facts of the case, the court found that the rescission provision of the federal Truth-In-Lending Act ("TILA")[39] was most akin to the CFA, except that the TILA was more expansive. The TILA's rescission provision also requires that the rescinding party return any property received, "except that if the return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value."[40] In holding that "the legislature intended that any gaps [in the CFA] be supplied by judicial construction," the *Hurlbert* court adopted the TILA return of reasonable value provision when the goods could not be returned "in their original condition," as required by section 262B of the CFA.

The *Elder v. Coronet Insurance Co.*[41] court held that a CFA violation may be premised upon violating the public policy of another statute. *Elder* was an action alleging that an insurance company violated the CFA by denying claims solely based on the result of polygraph examinations. The court held that such use of polygraph tests violated the public policy of the Illinois civil[42] and criminal[43] statutes and the Federal Employee Polygraph Protection Act of 1988.[44] Notably, the court did not expressly find that the defendants had violated the letter of any of the statutes. Nonetheless, the court concluded that the practice constituted an unfair and deceptive act under the CFA.

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In numerous other cases, courts have implicitly applied the liberal construction mandate and the FTC standard and held that a violation of public policy or a regulatory statute also violates the CFA. For example, in *Logsdon v. Shelter Mut. Ins. Co.,*[45] the court held that breaching the Illinois Insurance Code[46] duty to offer underinsured motorist coverage also supported a CFA cause of action. Likewise, the *Mario's Butcher Shop v. Armour & Co.*[47] court held that the federal Wholesome Meat Act standards and regulations,[48] which provide no private cause of action for civil damages, "may properly be applied to a lawsuit brought under the CFA." Finally, in *Fisher v. Samuels,*[49] the court adopted the presumed public injury standard under section 10(b) of the Securities Exchange Act of 1934[50] to sustain an action under the CFA without specific allegations of actual harm to the public.[51]

In addition, the Illinois courts have applied the FTC standard to the reverse situation. That is, if the defendant's conduct is authorized by another statute, the conduct may not violate the CFA. For example, in *Lanier v. Associates Finance, Inc.,*[52] the installment loan contract creditor disclosed that prepayment rebates would be governed by the "Rule of 78's." The creditor did not explain this Rule or indicate that it constitutes a penalty for prepayment. The plaintiff sued the defendant under the CFA for failing to disclose and explain the material facts and effect of using the Rule of 78's. However, no Illinois statute required such an explanation and the Federal Reserve Board, in adopting Regulation Z, prohibited explaining such complex mathematical equations as the Rule of 78's because they detract from other important disclosures.[53] Therefore, the court found that the creditor adequately disclosed both the annual percentage rate and the method of computation, as required by the TILA.

The Illinois Supreme Court dismissed the plaintiff's CFA claim because complying with the TILA disclosure requirements is a defense to liability under the CFA. The court noted that section 10(b)(1) of the CFA precludes liability under the CFA when "actions or transactions [are] specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States."[54]

Where Illinois and federal statutes contain conflicting provisions, courts have applied the standard set by the Illinois statute. In *Laughlin v. Evanston Hospital,*[55] the plaintiffs claimed that the defendants engaged in a differential price fixing scheme prohibited by the Illinois Antitrust Act[56] and the federal Clayton Act.[57] One count alleged a violation of the Illinois Antitrust Act and the other count alleged a CFA claim based on a violation of the Clayton Act.

"[T]he [Illinois] legislature has expressly directed the courts to look to other statutes to determine whether or not there is a violation of the CFA."

The court first held that no Illinois Antitrust Act violation existed because price discrimination in and of itself is not an unreasonable restraint of trade, and because the plaintiff's actions were excluded from the Antitrust Act's prohibitions. The court then acknowledged that the price fixing activity did violate the Clayton Act and the Federal Trade Commission Act.[58] The court noted that the Illinois legislature did not prohibit price discrimination under the Illinois Antitrust Act. Concluding that the CFA was not intended as an "additional antitrust enforcement mechanism," the court held that "[i]t would be inconsistent to provide that the very conduct which is not sufficient to state a cause of action under the Antitrust Act is sufficient to state a cause of action under the Consumer Fraud Act."[59]

The foregoing cases represent implicit adherence to a per se violation rule, although none explicitly have adopted that approach. Thus, the CFA may be violated when another statute is violated, as in *Logsdon, Mario's,* and *Fisher,* or even when other laws are not specifically violated but the underlying public policy is, as was the case in *Hurlbert* and *Elder.* The reverse was held true in *Lanier,* in that the CFA may not be violated where a particular statute permits the defendant's conduct. Where state and federal laws conflicted, the *Laughlin* court deferred to the state law in evaluating the CFA claim.

2. Ignoring the Liberal Construction Provision and the FTC Standard.

A conflicting strand of cases has surfaced that completely depart from the FTC standard and thereby distort the purposes of the CFA. In *People ex rel. Daley v. Grady,*[60] for example, the court expressly refused to apply the per se rule in evaluating a CFA claim. The case involved a two count complaint, both counts alleging violations of the CFA. Count I alleged a CFA claim based on the defendant's failure to fulfill his promises regarding the sale of property and his misrepresentations regarding his refund policy. Count II alleged that the defendant violated the Illinois Real Estate License Act of 1983 ("RELA")[61] by engaging in the practice of real estate without a license. Count II further alleged that the RELA violation was a per se violation of the CFA.

Although the appellate court sustained Count I, it dismissed Count II, concluding that even if the defendant had violated the RELA, that violation would not per se constitute a violation of the CFA. The court reasoned that section 2O of the CFA[62] specifically incorporated several statutes, the violation of which automatically constituted CFA violations. Because the RELA was not among those statutes listed, a violation of the RELA was not per se a violation of the CFA.[63]

The *Grady* court interpreted as exhaustive the statutes listed in section 2O of the CFA. Section 2O does not purport to be an exhaustive list of which statutes will support a per se CFA violation. By isolating section 2O from the CFA's liberal construction mandate and the incorporated FTC standard, the court failed to interpret the CFA as a whole in light of the statute's expansive remedial purposes.

In *Holmes v. No. 2 Galesburg Crown Finance*[64] the court also refused to apply the per se violation rule. There, the defendant violated the Illinois Consumer Installment Loan Act ("CILA")[65] by failing to comply with the disclosure requirements of the CILA and by creating an impermissible security interest. The plaintiffs alleged that the CILA violations constituted a violation of the CFA "as a matter of law." Without any discussion of the FTC standard or the liberal construction mandate of the CFA, the *Holmes* court held that although "it may be possible for facts to exist wherein an impermissible security interest would be a violation of the Consumer Fraud Act, we believe that there is no such violation here as a matter of law."[66]

Finally, *Fitzgerald v. Chicago Title & Trust Co.*[67] suggests that a CFA claim may not be found even though a federal consumer protection statute is violated. *Fitzgerald* involved a CFA challenge to a title company's practice of paying allowances or rebates to institutions that purchased title services for real estate buyers and sellers. The consumers actually paid the bills upon which the rebate was based but were not aware of nor received the rebate.[68]

The court indicated that not every federal law violation necessarily constitutes a CFA violation. Although the court found that the defendant had violated the federal Real Estate Settlement Procedures Act of 1974,[69] the court independently analyzed the facts in order to find a CFA violation. The court reasoned that the CFA requires that federal law be considered only where there is a lack of Illinois case precedent in the area. The case further suggests that factual allegations must track the specific language of the CFA in order to properly state a cause of action.

In *Grady* and *Holmes,* the court rejected CFA claims based solely on a per se violation argument. In *Fitzgerald,* the Illinois Supreme Court declined to address the per se claim after a cause of action had been established by specific allegations of unfair and deceptive practices. In light of the above cases, when another statute has defined, explicitly or by implication, what acts or practices are unfair or deceptive, then performing these acts may be actionable under the CFA. However, the CFA cause of action exists only because the defendant's action is unfair or deceptive, and not solely because it violates the another statute. Although this appears to be mere semantics, it often forms, as seen above, the difference between obtaining relief and having the case dismissed. Thus, until the Illinois Supreme Court definitively decides whether to adopt a per se rule, it is imperative in pleading a cause of action under the CFA to show why the violation of the underlying statute also is an unfair and deceptive act or practice under the CFA.

"The per se violation rule comports with the purpose of the CFA, its liberal construction requirement, and the statutorily incorporated FTC standard."

C. The Need For A Per Se Rule

The problem with cases that do not consider a violation of another statute per se to constitute a cause of action under the CFA is that they fail to fully apply the analysis required by the CFA. The CFA prohibits actions that are unfair and deceptive. To determine whether an action is unfair or deceptive the courts are to consider the FTC standard and decide whether the practice offends public policy as established by other statutes. Thus, the legislature has expressly directed the courts to look to other statutes to determine whether or not there is a violation of the CFA.

The cases discussed in subsection 2, above, ignore the fact that another statute was violated. These cases look solely to the express CFA prohibitions and determine what is unfair or deceptive under the CFA on a case-by-case basis, without reference to other statutes. In *Fitzgerald,* for example, the court found that the alleged practice violated a federal statute.[70] In spite of this finding, the court still considered whether the plaintiffs established a deceptive practices claim with proof of: (1) a deceptive act or practice, (2) an intent by defendants that the plaintiff rely on the deception, and (3) the deception occurred in the course of conduct involving a trade or commerce.[71]

This approach has two major defects. First, the value of other consumer protection legislation is unnecessarily diminished when these protections are not also used as a standard under the CFA. In many cases these other statutes do not provide a private cause of action.

Second, the case-by-case approach diminishes the objective standard needed by both businesses and consumers to determine, without litigation, what conduct is lawful. A statute determines if a practice is unfair or deceptive before any actions are taken. Rejecting the per se rule in favor of a case-by-case analysis requires that parties litigate to determine whether the acts constituting a violation of these other statutes also constitute a CFA violation. These prob-

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lems, and the confusion caused by inconsistent applications of the liberal construction mandate of the CFA, could be avoided were Illinois to adopt a per se rule for determining what is unfair and deceptive conduct under the CFA.

D. Conclusion

The Consumer Fraud Act prohibits and makes actionable unfair and deceptive acts and practices. In determining whether an act is unfair to consumers, courts should look to whether the act violates another statute intended to protect consumers. Illinois should adopt the rule that a violation of another consumer protection statute is a per se violation of the CFA. This would allow wronged consumers to recover for damages suffered by such acts.

The per se violation rule comports with the purpose of the CFA, its liberal construction requirement, and the statutorily incorporated FTC standard. It also would decrease the confusion and uncertainty on the part of business and consumers in determining what conduct actually violates the CFA. Only by adopting the per se rule will the intent and purpose of the CFA be achieved in a comprehensive and consistent manner. Significantly, the cases in Illinois that have failed to apply the per se violation rule have simply ignored the liberal construction mandate and the FTC standard. No compelling argument has been stated in opposition to the per se rule.

The Illinois Supreme Court has not definitively decided whether violating a consumer protection statute per se is a violation of the CFA. Until the court does so, it is good practice, if not imperative, to plead and establish facts showing why the violation of the underlying statute is also an unfair and deceptive act or practice under the CFA.

ENDNOTES

1. ILL. REV. STAT. ch. 121-1/2, paras. 261-272 (1989).
2. *Laughlin v. Evanston Hospital*, 133 Ill. 2d 374, 550 N.E.2d 986, 993 (1990).
3. Truth-In-Lending Act ("TILA"), 15 U.S.C. *§§* 1601-1667e (1988); Retail Installment Sales Act ("RISA"), ILL. REV. STAT. ch. 121-1/2, paras. 501-533 (1989); Motor Vehicle Retail Installment Sales Act ("MVRISA"), ILL. REV. STAT. ch. 121-1/2, paras. 561-586 (1989).
4. Wage Assignment Act, ILL. REV. STAT. ch. 48, paras. 39.01-39.12 (1989).
5. Dance Studio Act, ILL. REV. STAT. ch. 29, paras. 50-1 to 50-12 (1989).
6. Travel Promotion and Consumer Protection Act, ILL. REV. STAT. ch. 121-1/2, paras. 1851-1857 (1989).
7. *See, e.g., Mario's Butcher Shop v. Armour & Co.*, 574 F. Supp. 653 (N.D. Ill. 1983).
8. *See, e.g., Dial Corp. v. Manghnani Inv. Corp.*, 659 F. Supp. 1230 (D. Conn. 1987); *Winston Realty Co. v. G.H.G., Inc.*, 331 S.E.2d 667 (N.C. 1985); *In re Scrimpsher*, 17 Bankr. 999 (N.D.N.Y. 1982); *Salois v. Mutual of Omaha Ins. Co.*, 90 Wash.2d 355, 581 P.2d 1349 (1978).
9. *See, e.g.*, CONN. GEN. STAT. ANN. § 42-110B(A) (1987 & Supp. 1990); N.C. GEN. STAT. § 75-1.1 (1988); N.Y. GEN. BUS. LAW § 349 (McKinney 1981); WASH REV. CODE ANN. § 19.86.020 (1989 & Supp. 1990).
10. 659 F. Supp. 1230 (D. Conn. 1987).
11. 15 U.S.C. § 1114 (1) and (2) (1988).
12. CONN. GEN. STAT. ANN. § 42-110b(a) (1987 & Supp. 1990).
13. *Id.*
14. *Infra* note 33 and accompanying text.
15. *Dial Corp.*, 659 F. Supp. at 1239.
16. 331 S.E.2d 667 (N.C. 1985).
17. N.C. GEN. STAT. §§ 95-47.6(2) and (9) (1989).
18. N.C. GEN. STAT. § 75-1.1 (1988).
19. *Winston*, 331 S.E.2d at 681.
20. *Id.*
21. 17 Bankr. 999 (1982).
22. 15 U.S.C. § 1692 (1988).
23. N.Y. GEN. BUS. LAW § 349 (McKinney 1981).
24. *Scrimpsher*, 17 Bankr. at 1015.
25. 90 Wash.2d 355, 581 P.2d 1349, 1351 (1978).
26. WASH. REV. CODE ANN. § 19.86.020 (1989 & Supp. 1990).
27. ILL. REV. STAT. ch. 121-1/2, para. 262.
28. ILL. REV. STAT. ch. 121-1/2, para. 271a.
29. 102 Ill. App. 3d 483, 429 N.E.2d 1267 (1st Dist. 1981).
30. *Duhl*, 429 N.E.2d at 1277.
31. ILL. REV. STAT. ch. 121-1/2, para. 271a (citing 15 U.S.C. §45 (1988)).
32. 405 U.S. 233 (1972).
33. *Sperry*, 405 U.S. at 243, n. 5.
34. *See, e.g., Elder v. Coronet Insurance Co.*, ___ Ill. App. 3d ___, No. 1-89-0893, slip op. (1st Dist., 7-27-90); *Hurlbert v. Cottier*, 56 Ill. App. 3d 893, 372 N.E.2d 734 (4th Dist. 1978).
35. *See e.g., Logsdon v. Shelter Mut. Ins. Co.*, 143 Ill. App. 3d 957, 493 N.E.2d 748 (1986); *Fisher v. Samuels*, 691 F. Supp. 63 (N.D. Ill. 1988); *Mario's Butcher Shop v. Armour & Co.*, 574 F. Supp. 653 (N.D. Ill. 1983).
36. 56 Ill. App. 3d 893, 372 N.E.2d 734 (4th Dist. 1978).
37. ILL. REV. STAT. ch. 121-1/2, para. 262.
38. *Hurlbert*, 372 N.E.2d at 736.
39. 15 U.S.C. § 1635 (1988).
40. *Id.*
41. ___ Ill. App. 3d ___, No. 1-89-0893, slip op. (1st Dist. 7-27-90).
42. ILL. REV. STAT. ch. 110, para. 2-1104 (1989).
43. ILL. REV. STAT. ch. 38, para. 155-11 (1989).
44. 29 U.S.C. §§ 2001-2009 (1988).
45. 143 Ill. App. 3d 957, 493 N.E.2d 748, 753 (3rd Dist. 1986).
46. ILL. REV. STAT. ch. 73, para. 755a-2 (1983).
47. 574 F. Supp. 653, 656 (N.D. Ill. 1983).
48. 21 U.S.C. §§ 601-695 (1988).
49. 691 F. Supp. 63, 73-74 (N.D. Ill. 1988).
50. 15 U.S.C. § 78j(b) (1988).
51. ILL. REV. STAT. ch. 121-1/2, para. 270a (1990)(proof of public injury is no longer required for an action under the CFA).
52. 114 Ill. 2d 1, 499 N.E.2d 440 (1986).
53. *Id.*, 499 N.E.2d at 445.
54. *Lanier*, 499 N.E.2d at 859, citing ILL. REV. STAT. ch. 121-1/2, para. 565 (1981).
55. 133 Ill. 2d 374, 550 N.E.2d 986 (1990).
56. ILL. REV. STAT. ch. 38, paras. 60.1-60.11 (1988).
57. 15 U.S.C. § 13(a) (1988).
58. *Id.*; 15 U.S.C. § 45(a)(1) (1988).
59. *Laughlin*, 550 N.E.2d at 993.
60. 139 Ill. App. 3d 379, 548 N.E.2d 764 (1st Dist. 1989).
61. ILL. REV. STAT. ch. 111, paras. 5801-5835 (1989).
62. ILL. REV. STAT. ch. 121-1/2, para. 262O (1989).
63. *Grady*, 548 N.E.2d at 766.
64. 77 Ill. App. 3d 785, 396 N.E.2d 583 (3rd Dist. 1979).
65. ILL. REV. STAT. ch. 74, para. 51-77 (1979)(transferred to ch. 17, paras. 5401-5433 (1989)).
66. *Holmes*, 396 N.E.2d at 865.
67. 72 Ill. 2d 179, 380 N.E.2d 790 (1978).
68. *Id.*, 380 N.E.2d at 791-92.
69. 12 U.S.C. § 2607 (1988).
70. *Supra* note 67-69 and accompanying text.
71. *Fitzgerald*, 380 N.E.2d at 794-95.