Illinois Legislation To Watch In 2022

By Lauraann Wood · *Listen to article*

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Law360 (January 3, 2022, 12:02 PM EST) -- Illinois' upcoming lawmaking session could seem shorter and lighter than usual since every state legislator's seat will be on the 2022 election ballot, but some bills may still make waves before the session ends, such as one looking to help insulate clients from bad-acting attorneys and another looking to regulate third-party litigation funders.

The election will be on the minds of state senators and representatives who will be looking to keep their seats in Springfield after 2020 census results prompted a hotly contested legislative remapping. Campaign obligations will also be on lawmakers' plates for longer than they're used to after the state pushed its primary from March to June.

The General Assembly has tried accommodating the scheduling shift partly by planning to adjourn by early April, "which in a traditional year, that's just when things are starting to get interesting," said Abe Scarr, director of the Illinois Public Interest Research Group. While lawmakers may return to address matters such as budget appropriations or other significant measures, "it's just going to be a really tight timeline" to pass bills, and "there is going to be a hesitancy to put members in tight spots on votes," Scarr said.

But Illinois' legislators could still pass significant measures in the months ahead. Illinois Public Interest Research Group, for example, is hoping lawmakers will move a bill that would end gas utilities' ability to pass certain infrastructure costs on to customers a year early. And a Democratic representative is hoping to reinforce state protections against attorney embezzlement with a bill he introduced on the heels of Los Angeles plaintiffs lawyer Thomas V. Girardi's massively public settlement theft scandal.

Lawmakers are also floating a proposal that would set official bounds within which third-party litigation funders can operate in the state.

Here's more on a handful of bills to watch in 2022.

Girardi-Inspired Legislation Aims to Protect Clients

A bill inspired by Thomas V. Girardi's public downward spiral aims to let clients ask for court intervention if they believe their attorney has withheld money or other property from them, but experts say the bill's current form might interfere with the state's separation of powers.

House Bill 4128 looks to amend the Illinois Attorney Act by giving clients an in-court route to obtain money and other property they believe their lawyers may have withheld from them. Should an attorney refuse or neglect a client's demand for their property, the proposal would allow the client to petition a court for either delivery or accounting of that property and expect their lawyers' response within 30 days.

The bill would also give courts authority to issue injunctive orders if the client presents a sufficiently convincing case for such relief, and award fees and costs to whichever party prevails in the dispute.

Democratic state Rep. Bob Morgan told Law360 he introduced the proposal after learning Girardi, once a celebrated plaintiffs lawyer, got disbarred from practicing law in Los Angeles-area federal courts as part of the fallout for embezzling millions of dollars owed to clients, including orphans and family members of plane crash victims.

Morgan, a partner at Benesch Friedlander Coplan & Aronoff LLP who's based in Deerfield, said he spotted "a flaw in the system" when he learned some of Girardi's victims received money they were owed only after putting public pressure on Girardi's now-bankrupt firm, Girardi Keese PC.

Clients can complain to the Illinois Attorney Registration and Disciplinary Commission when they suspect their lawyers have wronged them, "but that takes time," and the agency's process has "no mechanism to get a relatively immediate accounting," Morgan said. H.B. 4128 will hopefully fill the holes in the attorney regulator's process.

"At the end of the day, I want to make sure a victim has an opportunity to get a real-time accounting of where their money is," Morgan said. "I found that was something that was not being required and should be."

Experts, including Chicago-Kent College of Law professor Harold Krent, have told Law360 the portion of the bill allowing a property accounting could be useful and help clients more quickly learn the status of their cases.

"I do think the problem stems from an information gap, and this might ever-so-slightly breach that gap, but not very far," Krent said. "So, is it worth it? I don't know."

Others, including Sari Montgomery of Robinson Stewart Montgomery & Doppke LLC, have also aired concerns that the bill could create separation-of-powers issues between the state's legislative and judicial branches of government.

Montgomery, whose practice focuses on matters involving legal ethics and professional responsibility, told Law360 that the proposal seems to tread ground the Illinois' attorney regulator, the Illinois Attorney Registration and Disciplinary Commission, has largely already covered. The agency has channels through which clients can raise concerns over misappropriated funds, and restitution is within the realm of possible relief it could order, she said.

"I certainly don't mean to undermine the legislation, but we certainly have protective measures in place through the ethics rules to deal with" mishandled client funds, Montgomery said. "I've either worked for or had dealings with the ARDC for 26 years now, and I have never seen them not take a claim of misappropriation of client funds extremely seriously."

The bill is H.B. 4128 in the Illinois House of Representatives.

Third-Party Litigation Funding Regulations

A piece of legislation pending in the state Senate could regulate third-party litigation funding companies by setting boundaries such as maximum fees and mandatory contract terms, but some experts think the proposal may not do enough.

The amended language of Senate Bill 1088 would establish the Consumer Legal Funding Act and officially define the box within which litigation funders may operate in the Land of Lincoln.

For instance, the bill would set legal funding transactions at a maximum of $500,000 and allow the funding companies to collect up to 36% of their funded amount for annual fees. The funding companies would be able to take an additional servicing fee constituting up to 10% of the funded amount and a $100 fee per transaction, but no fee would be allowed to extend past 42 months from the funding date.

The proposal also sets out mandatory contract terms and provisions, requires applicants to maintain a positive net worth of at least $30,000 and outlines both licensing and disciplinary procedures for litigation funders looking to do business in the state.

While the bill takes aim at an industry that has operated largely unchecked in the state, some experts say it might not go far enough to address the issues that third-party funders currently add to litigation.

For instance, Donald "Pat" Eckler of Goldberg Segalla LLP told Law360 that the proposal appears to be "today's answer to yesterday's problem" since it only addresses litigation funding that flows directly to plaintiffs. It's more typical these days for litigation funders to send funding directly to the lawyer or a lien doctor, or to package a portfolio of mass tort claims for litigation funded by venture capitalists, he said.

Eckler, whose practice involves defending professionals in various civil disputes, also dinged the proposal for failing to include a provision that would mandate disclosure of a third-party funder's interest in a litigation. Such a disclosure could go a long way to helping parties settle their disputes quicker, he said.

Plaintiffs don't typically disclose when they're backed by a litigation funder, but taking that approach "makes settling harder because you don't know all the parties drinking from the till."

"You don't know that you have this gorilla in the room. It would be like trying to settle a case, and you don't know who the insurance company is," he said. "All we want to do is know that it exists."

The bill is S.B. 1088 in the Illinois Senate.

Early Repeal of Certain Gas Utility Surcharges

The state's gas utilities could see an early end to a statutory provision allowing them to pass certain infrastructure costs along to customers.

Illinois Public Interest Research Group is floating a proposal in both the House and the Senate that would end the gas utilities' statutory surcharge on certain qualifying infrastructure plant investments a year sooner than planned, a bill that the group's Scarr said could make an impact particularly since customers will be paying more to heat their homes this winter.

Utility bills in Illinois include costs from both the supply side and the delivery side of the utility. The surcharge at issue allows gas utilities such as People's Gas in Chicago, Nicor in the suburbs and Ameren in southern Illinois to pass costs associated with certain infrastructure investments along to their customers without all the typical regulatory oversight, Scarr told Law360.

While the surcharge covers only a subset of the utilities' spending, "it's not a small subset," as it has made up a majority of their infrastructure spending for the last five years, he said.

"We think this is a big reason why on the delivery side of the bill that prices have been going up for years and years," Scarr said.

Utilities have been able to mask their rising delivery prices because the supply side of customers' bills has stayed low with the increase of fracking and other gas production methods on home soil. And since Illinois' rebounding economy has created a classic supply and demand situation on the utilities, "all of that is going to kind of get unveiled this winter because they no longer have the cover of the low gas prices," Scarr said.

The surcharge is set to sunset in 2023, but "we're just trying to end it as soon as we can," Scarr said.

The bills are H.B. 3941 in the House of Representatives and S.B. 570 in the Senate.

--Editing by Kelly Duncan and Jay Jackson Jr.

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