



Glenn E. Benckendorf
David A. Benckendorf
James W. Benckendorf
Lynne M. Binkele

Attorneys at Law

101 N. E. Randolph Ave. ■ Peoria, IL 61606 ■ 309-673-0797 ■ Fax: 309-673-8759
204 N. Main St. ■ Morton, IL 61550 ■ 309-266-6121 ■ Fax: 309-266-8759

June 2001

Points of Business Interest

- *Internet Taxation.*

A bi-partisan bill to ban Internet taxation (House version), and to encourage state governments to simplify systems for collecting taxes for Internet sales (Senate version), was introduced recently. The Internet Tax Non-Discrimination Act, Senate bill 288. Meanwhile, the states have been busy with their proposed Uniform Act and Uniform Agreement.

- *The End is in Sight for Windows 95.*

As of December 31, 2000, Microsoft will no longer provide free bug fixes for Windows 95, and callers must now pay for technical support for Win 95. In addition, the licenses that let most computer makers install the operating system into new computers expired on December 31, 2000, and Microsoft is no longer offering new volume licensing agreements. Upgrade now.

- *Warning! Warning! Danger, Will Robinson! The E-mail "Wire Tap."*

Email programs such as Netscape Mail, Internet Explorer Mail and Microsoft Outlook Mail, can be tracked, with the proper JAVA script inserted in the original message. All information added and forwarded as the messages move along can be recalled to the original sender, including any comments. For people who forward whole emails intact to others for comment, the JAVA script works like a wiretap. To avoid the problem, cut and paste text from the original message, rather than forwarding it whole.

- *Software Piracy: If You Get This Letter...*

An official-looking letter from the Business Software Alliance in Washington D.C. asks, "Are you using unlicensed software?" If so, the Alliance gives you one month to get legal. If you get one of these letters, don't panic, as the letter does not mean that the Alliance has evidence of use of unlicensed software. Instead, they send the letters with very little screening.

- *OSHA Ergonomics Rules Repealed.*

In an earlier newsletter, the OSHA Ergonomics rules were discussed. Congress subsequently repealed the OSHA Ergonomics rules and sent their resolution to President Bush, who is expected to sign it. Proponents of the repeal called the rules burdensome and costly to businesses. This is the first time Congress has repealed a work-place safety rule.

- *Proposed Legislation:*

A. *Illinois Fair Bargain Act.*

A clause in a form contract or lease that modifies or limits procedural rights necessary or useful to a consumer, borrower, tenant, or employee in the enforcement of substantive rights against the party drafting the form contract or lease is voidable by the consumer, borrower, tenant, or employee. This will make attorneys A LOT of money, defining what clauses are included.

B. *Revised Uniform Limited Partnership Act.*

The Revised Uniform Limited Partnership Act was amended effective January 1, 2001, to deal with issues of withdrawal from the partnership and assignment of partnership interests.

C. *Reckless Corporate Conduct.*

SB 659 and H.B. 524 propose to amend the Criminal Code to create the offense of “reckless corporate conduct.” It provides that a corporate entity or official commits reckless corporate conduct when the entity or official: (1) conceals from authorities any product or process that may cause death or serious injury; (2) engages in conduct that results in death, that the corporate entity or corporate official knew or should have known would result in death, or that was reckless; or (3) knowingly or recklessly endangers the public; or (4) destroys or falsifies documents pertaining to hazards to the public or the corporate entity's employees or agents. Reckless corporate conduct is a Class 3 felony.

D. *Uniform Computer Information Transactions Act (UCITA.).*

H.B. 3058 introduced UCITA in Illinois. Only two other states have adopted the controversial law, the first being Virginia, and it just amended its law. The most contentious provisions: it creates a statutory presumption that software purchases are a license, rather than a sale of goods, it explicitly validates the use of clickwrap contracting practices, and it prevents consumers from utilizing ordinary “self-help” measures. The bill quickly died after being sent to the Rule Committee. In the bellwether state of New York, the Attorney General declared the law void and unenforceable if one of the parties to a contract under the Act is a New York resident. Click delete.

E. *Employers Can Compel Contract Arbitration.*

The Federal Arbitration Act was upheld by the U.S. Supreme Court in the face of a challenge based upon state discrimination laws. An employer can include a provision in an employment agreement compelling arbitration.

F. *Business Corporation Act Changes.*

S.B. 725 makes numerous changes to various business statutes, including removing employees and agents from the mandatory indemnification requirements of the Business Corporation Act, changes regarding signature requirements on corporate documents and changes assumed name rules.

- *Stuck in a Losing Contract? Get Out of Here!*

A few months ago the Appellate Court ruled that a defendant could properly breach its contract where it ceased doing business after it sold the business due to the fact that it was losing money. The court held that the Uniform Commercial Code requires only that the defendant act in good faith, and there is no implied duty to stay in business.