



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2194

Introduced 2/14/2008, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

5 ILCS 350/1  
5 ILCS 350/2

from Ch. 127, par. 1301  
from Ch. 127, par. 1302

Amends the State Employee Indemnification Act. Extends the Act's indemnification provisions to service contractors of the Department of Juvenile Justice as State employees and to physicians employed by that Department with respect to death or injury actions resulting from or arising out of a physician's conduct within the scope of the physician's State employment.

LRB095 15251 JAM 41236 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The State Employee Indemnification Act is  
5 amended by changing Sections 1 and 2 as follows:

6 (5 ILCS 350/1) (from Ch. 127, par. 1301)

7 Sec. 1. Definitions. For the purpose of this Act:

8 (a) The term "State" means the State of Illinois, the  
9 General Assembly, the court, or any State office, department,  
10 division, bureau, board, commission, or committee, the  
11 governing boards of the public institutions of higher education  
12 created by the State, the Illinois National Guard, the  
13 Comprehensive Health Insurance Board, any poison control  
14 center designated under the Poison Control System Act that  
15 receives State funding, or any other agency or instrumentality  
16 of the State. It does not mean any local public entity as that  
17 term is defined in Section 1-206 of the Local Governmental and  
18 Governmental Employees Tort Immunity Act or a pension fund.

19 (b) The term "employee" means any present or former elected  
20 or appointed officer, trustee or employee of the State, or of a  
21 pension fund, any present or former commissioner or employee of  
22 the Executive Ethics Commission or of the Legislative Ethics  
23 Commission, any present or former Executive, Legislative, or

1 Auditor General's Inspector General, any present or former  
2 employee of an Office of an Executive, Legislative, or Auditor  
3 General's Inspector General, any present or former member of  
4 the Illinois National Guard while on active duty, individuals  
5 or organizations who contract with the Department of  
6 Corrections, the Department of Juvenile Justice, the  
7 Comprehensive Health Insurance Board, or the Department of  
8 Veterans' Affairs to provide services, individuals or  
9 organizations who contract with the Department of Human  
10 Services (as successor to the Department of Mental Health and  
11 Developmental Disabilities) to provide services including but  
12 not limited to treatment and other services for sexually  
13 violent persons, individuals or organizations who contract  
14 with the Department of Military Affairs for youth programs,  
15 individuals or organizations who contract to perform carnival  
16 and amusement ride safety inspections for the Department of  
17 Labor, individual representatives of or designated  
18 organizations authorized to represent the Office of State  
19 Long-Term Ombudsman for the Department on Aging, individual  
20 representatives of or organizations designated by the  
21 Department on Aging in the performance of their duties as elder  
22 abuse provider agencies or regional administrative agencies  
23 under the Elder Abuse and Neglect Act, individuals or  
24 organizations who perform volunteer services for the State  
25 where such volunteer relationship is reduced to writing,  
26 individuals who serve on any public entity (whether created by

1 law or administrative action) described in paragraph (a) of  
2 this Section, individuals or not for profit organizations who,  
3 either as volunteers, where such volunteer relationship is  
4 reduced to writing, or pursuant to contract, furnish  
5 professional advice or consultation to any agency or  
6 instrumentality of the State, individuals who serve as foster  
7 parents for the Department of Children and Family Services when  
8 caring for a Department ward, and individuals who serve as  
9 arbitrators pursuant to Part 10A of Article II of the Code of  
10 Civil Procedure and the rules of the Supreme Court implementing  
11 Part 10A, each as now or hereafter amended, but does not mean  
12 an independent contractor except as provided in this Section.  
13 The term includes an individual appointed as an inspector by  
14 the Director of State Police when performing duties within the  
15 scope of the activities of a Metropolitan Enforcement Group or  
16 a law enforcement organization established under the  
17 Intergovernmental Cooperation Act. An individual who renders  
18 professional advice and consultation to the State through an  
19 organization which qualifies as an "employee" under the Act is  
20 also an employee. The term includes the estate or personal  
21 representative of an employee.

22 (c) The term "pension fund" means a retirement system or  
23 pension fund created under the Illinois Pension Code.

24 (Source: P.A. 93-617, eff. 12-9-03.)

1           Sec. 2. Representation and indemnification of State  
2 employees.

3           (a) In the event that any civil proceeding is commenced  
4 against any State employee arising out of any act or omission  
5 occurring within the scope of the employee's State employment,  
6 the Attorney General shall, upon timely and appropriate notice  
7 to him by such employee, appear on behalf of such employee and  
8 defend the action. In the event that any civil proceeding is  
9 commenced against any physician who is an employee of the  
10 Department of Corrections, the Department of Juvenile Justice,  
11 or the Department of Human Services (in a position relating to  
12 the Department's mental health and developmental disabilities  
13 functions) alleging death or bodily injury or other injury to  
14 the person of the complainant resulting from and arising out of  
15 any act or omission occurring on or after December 3, 1977  
16 within the scope of the employee's State employment, or against  
17 any physician who is an employee of the Department of Veterans'  
18 Affairs alleging death or bodily injury or other injury to the  
19 person of the complainant resulting from and arising out of any  
20 act or omission occurring on or after the effective date of  
21 this amendatory Act of 1988 within the scope of the employee's  
22 State employment, or in the event that any civil proceeding is  
23 commenced against any attorney who is an employee of the State  
24 Appellate Defender alleging legal malpractice or for other  
25 damages resulting from and arising out of any legal act or  
26 omission occurring on or after December 3, 1977, within the

1 scope of the employee's State employment, or in the event that  
2 any civil proceeding is commenced against any individual or  
3 organization who contracts with the Department of Labor to  
4 provide services as a carnival and amusement ride safety  
5 inspector alleging malpractice, death or bodily injury or other  
6 injury to the person arising out of any act or omission  
7 occurring on or after May 1, 1985, within the scope of that  
8 employee's State employment, the Attorney General shall, upon  
9 timely and appropriate notice to him by such employee, appear  
10 on behalf of such employee and defend the action. Any such  
11 notice shall be in writing, shall be mailed within 15 days  
12 after the date of receipt by the employee of service of  
13 process, and shall authorize the Attorney General to represent  
14 and defend the employee in the proceeding. The giving of this  
15 notice to the Attorney General shall constitute an agreement by  
16 the State employee to cooperate with the Attorney General in  
17 his defense of the action and a consent that the Attorney  
18 General shall conduct the defense as he deems advisable and in  
19 the best interests of the employee, including settlement in the  
20 Attorney General's discretion. In any such proceeding, the  
21 State shall pay the court costs and litigation expenses of  
22 defending such action, to the extent approved by the Attorney  
23 General as reasonable, as they are incurred.

24 (b) In the event that the Attorney General determines that  
25 so appearing and defending an employee either (1) involves an  
26 actual or potential conflict of interest, or (2) that the act

1 or omission which gave rise to the claim was not within the  
2 scope of the employee's State employment or was intentional,  
3 wilful or wanton misconduct, the Attorney General shall decline  
4 in writing to appear or defend or shall promptly take  
5 appropriate action to withdraw as attorney for such employee.  
6 Upon receipt of such declination or upon such withdrawal by the  
7 Attorney General on the basis of an actual or potential  
8 conflict of interest, the State employee may employ his own  
9 attorney to appear and defend, in which event the State shall  
10 pay the employee's court costs, litigation expenses and  
11 attorneys' fees to the extent approved by the Attorney General  
12 as reasonable, as they are incurred. In the event that the  
13 Attorney General declines to appear or withdraws on the grounds  
14 that the act or omission was not within the scope of  
15 employment, or was intentional, wilful or wanton misconduct,  
16 and a court or jury finds that the act or omission of the State  
17 employee was within the scope of employment and was not  
18 intentional, wilful or wanton misconduct, the State shall  
19 indemnify the State employee for any damages awarded and court  
20 costs and attorneys' fees assessed as part of any final and  
21 unreversed judgment. In such event the State shall also pay the  
22 employee's court costs, litigation expenses and attorneys'  
23 fees to the extent approved by the Attorney General as  
24 reasonable.

25 In the event that the defendant in the proceeding is an  
26 elected State official, including members of the General

1 Assembly, the elected State official may retain his or her  
2 attorney, provided that said attorney shall be reasonably  
3 acceptable to the Attorney General. In such case the State  
4 shall pay the elected State official's court costs, litigation  
5 expenses, and attorneys' fees, to the extent approved by the  
6 Attorney General as reasonable, as they are incurred.

7 (b-5) The Attorney General may file a counterclaim on  
8 behalf of a State employee, provided:

9 (1) the Attorney General determines that the State  
10 employee is entitled to representation in a civil action  
11 under this Section;

12 (2) the counterclaim arises out of any act or omission  
13 occurring within the scope of the employee's State  
14 employment that is the subject of the civil action; and

15 (3) the employee agrees in writing that if judgment is  
16 entered in favor of the employee, the amount of the  
17 judgment shall be applied to offset any judgment that may  
18 be entered in favor of the plaintiff, and then to reimburse  
19 the State treasury for court costs and litigation expenses  
20 required to pursue the counterclaim. The balance of the  
21 collected judgment shall be paid to the State employee.

22 (c) Notwithstanding any other provision of this Section,  
23 representation and indemnification of a judge under this Act  
24 shall also be provided in any case where the plaintiff seeks  
25 damages or any equitable relief as a result of any decision,  
26 ruling or order of a judge made in the course of his or her



1 judicial or administrative duties, without regard to the theory  
2 of recovery employed by the plaintiff. Indemnification shall be  
3 for all damages awarded and all court costs, attorney fees and  
4 litigation expenses assessed against the judge. When a judge  
5 has been convicted of a crime as a result of his or her  
6 intentional judicial misconduct in a trial, that judge shall  
7 not be entitled to indemnification and representation under  
8 this subsection in any case maintained by a party who seeks  
9 damages or other equitable relief as a direct result of the  
10 judge's intentional judicial misconduct.

11 (d) In any such proceeding where notice in accordance with  
12 this Section has been given to the Attorney General, unless the  
13 court or jury finds that the conduct or inaction which gave  
14 rise to the claim or cause of action was intentional, wilful or  
15 wanton misconduct and was not intended to serve or benefit  
16 interests of the State, the State shall indemnify the State  
17 employee for any damages awarded and court costs and attorneys'  
18 fees assessed as part of any final and unreversed judgment, or  
19 shall pay such judgment. Unless the Attorney General determines  
20 that the conduct or inaction which gave rise to the claim or  
21 cause of action was intentional, wilful or wanton misconduct  
22 and was not intended to serve or benefit interests of the  
23 State, the case may be settled, in the Attorney General's  
24 discretion and with the employee's consent, and the State shall  
25 indemnify the employee for any damages, court costs and  
26 attorneys' fees agreed to as part of the settlement, or shall

1 pay such settlement. Where the employee is represented by  
2 private counsel, any settlement must be so approved by the  
3 Attorney General and the court having jurisdiction, which shall  
4 obligate the State to indemnify the employee.

5 (e) (i) Court costs and litigation expenses and other costs  
6 of providing a defense or counterclaim, including attorneys'  
7 fees obligated under this Section, shall be paid from the State  
8 Treasury on the warrant of the Comptroller out of  
9 appropriations made to the Department of Central Management  
10 Services specifically designed for the payment of costs, fees  
11 and expenses covered by this Section.

12 (ii) Upon entry of a final judgment against the employee,  
13 or upon the settlement of the claim, the employee shall cause  
14 to be served a copy of such judgment or settlement, personally  
15 or by certified or registered mail within thirty days of the  
16 date of entry or settlement, upon the chief administrative  
17 officer of the department, office or agency in which he is  
18 employed. If not inconsistent with the provisions of this  
19 Section, such judgment or settlement shall be certified for  
20 payment by such chief administrative officer and by the  
21 Attorney General. The judgment or settlement shall be paid from  
22 the State Treasury on the warrant of the Comptroller out of  
23 appropriations made to the Department of Central Management  
24 Services specifically designed for the payment of claims  
25 covered by this Section.

26 (f) Nothing contained or implied in this Section shall

1 operate, or be construed or applied, to deprive the State, or  
2 any employee thereof, of any defense heretofore available.

3 (g) This Section shall apply regardless of whether the  
4 employee is sued in his or her individual or official capacity.

5 (h) This Section shall not apply to claims for bodily  
6 injury or damage to property arising from motor vehicle  
7 accidents.

8 (i) This Section shall apply to all proceedings filed on or  
9 after its effective date, and to any proceeding pending on its  
10 effective date, if the State employee gives notice to the  
11 Attorney General as provided in this Section within 30 days of  
12 the Act's effective date.

13 (j) The amendatory changes made to this Section by this  
14 amendatory Act of 1986 shall apply to all proceedings filed on  
15 or after the effective date of this amendatory Act of 1986 and  
16 to any proceeding pending on its effective date, if the State  
17 employee gives notice to the Attorney General as provided in  
18 this Section within 30 days of the effective date of this  
19 amendatory Act of 1986.

20 (k) This Act applies to all State officials who are serving  
21 as trustees, or their appointing authorities, of a clean energy  
22 community trust or as members of a not-for-profit foundation or  
23 corporation established pursuant to Section 16-111.1 of the  
24 Public Utilities Act.

25 (Source: P.A. 90-655, eff. 7-30-98; 91-781, eff. 6-9-00.)