

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 Section 2 as follows:

6 (5 ILCS 350/2) (from Ch. 127, par. 1302)

7 Sec. 2. Representation and indemnification of State
8 employees.

9 (a) In the event that any civil proceeding is commenced
10 against any State employee arising out of any act or omission
11 occurring within the scope of the employee's State employment,
12 the Attorney General shall, upon timely and appropriate notice
13 to him by such employee, appear on behalf of such employee and
14 defend the action. In the event that any civil proceeding is
15 commenced against any physician who is an employee of the
16 Department of Corrections or the Department of Human Services
17 (in a position relating to the Department's mental health and
18 developmental disabilities functions) alleging death or bodily
19 injury or other injury to the person of the complainant
20 resulting from and arising out of any act or omission occurring
21 on or after December 3, 1977 within the scope of the employee's
22 State employment, or against any physician who is an employee
23 of the Department of Veterans' Affairs alleging death or bodily

1 injury or other injury to the person of the complainant
2 resulting from and arising out of any act or omission occurring
3 on or after the effective date of this amendatory Act of 1988
4 within the scope of the employee's State employment, or in the
5 event that any civil proceeding is commenced against any
6 attorney who is an employee of the State Appellate Defender
7 alleging legal malpractice or for other damages resulting from
8 and arising out of any legal act or omission occurring on or
9 after December 3, 1977, within the scope of the employee's
10 State employment, or in the event that any civil proceeding is
11 commenced against any individual or organization who contracts
12 with the Department of Labor to provide services as a carnival
13 and amusement ride safety inspector alleging malpractice,
14 death or bodily injury or other injury to the person arising
15 out of any act or omission occurring on or after May 1, 1985,
16 within the scope of that employee's State employment, the
17 Attorney General shall, upon timely and appropriate notice to
18 him by such employee, appear on behalf of such employee and
19 defend the action. Any such notice shall be in writing, shall
20 be mailed within 15 days after the date of receipt by the
21 employee of service of process, and shall authorize the
22 Attorney General to represent and defend the employee in the
23 proceeding. The giving of this notice to the Attorney General
24 shall constitute an agreement by the State employee to
25 cooperate with the Attorney General in his defense of the
26 action and a consent that the Attorney General shall conduct

1 the defense as he deems advisable and in the best interests of
2 the employee, including settlement in the Attorney General's
3 discretion. In any such proceeding, the State shall pay the
4 court costs and litigation expenses of defending such action,
5 to the extent approved by the Attorney General as reasonable,
6 as they are incurred.

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

1 intentional, wilful or wanton misconduct, the State shall
2 indemnify the State employee for any damages awarded and court
3 costs and attorneys' fees assessed as part of any final and
4 unreversed judgment. In such event the State shall also pay the
5 employee's court costs, litigation expenses and attorneys'
6 fees to the extent approved by the Attorney General as
7 reasonable.

8 In the event that the defendant in the proceeding is an
9 elected State official, including members of the General
10 Assembly, the elected State official may retain his or her
11 attorney, provided that said attorney shall be reasonably
12 acceptable to the Attorney General. In such case the State
13 shall pay the elected State official's court costs, litigation
14 expenses, and attorneys' fees, to the extent approved by the
15 Attorney General as reasonable, as they are incurred.

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

18 (1) the Attorney General determines that the State
19 employee is entitled to representation in a civil action
20 under this Section;

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

24 (3) the employee agrees in writing that if judgment is
25 entered in favor of the employee, the amount of the
26 judgment shall be applied to offset any judgment that may

1 be entered in favor of the plaintiff, and then to reimburse
2 the State treasury for court costs and litigation expenses
3 required to pursue the counterclaim. The balance of the
4 collected judgment shall be paid to the State employee.

5 (c) Notwithstanding any other provision of this Section,
6 representation and indemnification of a judge under this Act
7 shall also be provided in any case where the plaintiff seeks
8 damages or any equitable relief as a result of any decision,
9 ruling or order of a judge made in the course of his or her
10 judicial or administrative duties, without regard to the theory
11 of recovery employed by the plaintiff. Indemnification shall be
12 for all damages awarded and all court costs, attorney fees and
13 litigation expenses assessed against the judge. When a judge
14 has been convicted of a crime as a result of his or her
15 intentional judicial misconduct in a trial, that judge shall
16 not be entitled to indemnification and representation under
17 this subsection in any case maintained by a party who seeks
18 damages or other equitable relief as a direct result of the
19 judge's intentional judicial misconduct.

20 (d) In any such proceeding where notice in accordance with
21 this Section has been given to the Attorney General, unless the
22 court or jury finds that the conduct or inaction which gave
23 rise to the claim or cause of action was intentional, wilful or
24 wanton misconduct and was not intended to serve or benefit
25 interests of the State, the State shall indemnify the State
26 employee for any damages awarded and court costs and attorneys'

1 fees assessed as part of any final and unreversed judgment, or
2 shall pay such judgment. Unless the Attorney General determines
3 that the conduct or inaction which gave rise to the claim or
4 cause of action was intentional, wilful or wanton misconduct
5 and was not intended to serve or benefit interests of the
6 State, the case may be settled, in the Attorney General's
7 discretion and with the employee's consent, and the State shall
8 indemnify the employee for any damages, court costs and
9 attorneys' fees agreed to as part of the settlement, or shall
10 pay such settlement. Where the employee is represented by
11 private counsel, any settlement must be so approved by the
12 Attorney General and the court having jurisdiction, which shall
13 obligate the State to indemnify the employee.

14 (e) (i) Court costs and litigation expenses and other costs
15 of providing a defense or counterclaim, including attorneys'
16 fees obligated under this Section, shall be paid from the State
17 Treasury on the warrant of the Comptroller out of
18 appropriations made to the Department of Central Management
19 Services specifically designed for the payment of costs, fees
20 and expenses covered by this Section.

21 (ii) Upon entry of a final judgment against the employee,
22 or upon the settlement of the claim, the employee shall cause
23 to be served a copy of such judgment or settlement, personally
24 or by certified or registered mail within thirty days of the
25 date of entry or settlement, upon the chief administrative
26 officer of the department, office or agency in which he is

1 employed. If not inconsistent with the provisions of this
2 Section, such judgment or settlement shall be certified for
3 payment by such chief administrative officer and by the
4 Attorney General. The judgment or settlement shall be paid from
5 the State Treasury on the warrant of the Comptroller out of
6 appropriations made to the Department of Central Management
7 Services specifically designed for the payment of claims
8 covered by this Section.

9 (f) Nothing contained or implied in this Section shall
10 operate, or be construed or applied, to deprive the State, or
11 any employee thereof, of any defense heretofore available.

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

14 (h) This Section shall not apply to claims for bodily
15 injury or damage to property arising from motor vehicle
16 accidents.

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

22 (j) The amendatory changes made to this Section by this
23 amendatory Act of 1986 shall apply to all proceedings filed on
24 or after the effective date of this amendatory Act of 1986 and
25 to any proceeding pending on its effective date, if the State
26 employee gives notice to the Attorney General as provided in

1 this Section within 30 days of the effective date of this
2 amendatory Act of 1986.

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

8 (l) The State shall not provide representation for, nor
9 shall it indemnify, any State employee in any criminal
10 proceeding arising out of that employee's State employment.
11 Nothing in this Act shall be construed to authorize the State
12 to represent or indemnify State employees in criminal matters.

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

14 Section 10. The Local Governmental and Governmental
15 Employees Tort Immunity Act is amended by changing Section
16 2-302 as follows:

17 (745 ILCS 10/2-302) (from Ch. 85, par. 2-302)

18 Sec. 2-302. If any claim or action is instituted against an
19 employee of a local public entity based on an injury allegedly
20 arising out of an act or omission occurring within the scope of
21 his employment as such employee, the entity may elect to do any
22 one or more of the following:

23 (a) appear and defend against the claim or action;

24 (b) indemnify the employee or former employee for his

1 court costs or reasonable attorney's fees, or both,
2 incurred in the defense of such claim or action;

3 (c) pay, or indemnify the employee or former employee
4 for a judgment based on such claim or action; or

5 (d) pay, or indemnify the employee or former employee
6 for, a compromise or settlement of such a claim or action.

7 It is hereby declared to be the public policy of this
8 State, however, that no local public entity may elect to
9 indemnify an employee for any portion of a judgment
10 representing an award of punitive or exemplary damages.

11 No local public entity shall provide representation for,
12 nor shall it indemnify, any employee of that local public
13 entity in any criminal proceeding arising out of that
14 employee's employment with the local government entity.
15 Nothing in this Act shall be construed to authorize local
16 public entities to represent or indemnify their employees in
17 criminal matters.

18 (Source: P.A. 92-810, eff. 8-21-02.)