

1 AN ACT in relation to State employees.

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
12 education created by the State, the Illinois National Guard,
13 the 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
16 instrumentality of the State. It does not mean any local
17 public entity as that term is defined in Section 1-206 of the
18 Local Governmental and Governmental Employees Tort Immunity
19 Act or a pension fund.

20 (b) The term "employee" means any present or former
21 elected or appointed officer, trustee or employee of the
22 State, or of a pension fund, any present or former member of
23 the Illinois National Guard while on active duty, individuals
24 or organizations who contract with the Department of
25 Corrections, the Comprehensive Health Insurance Board, or the
26 Department of Veterans' Affairs to provide services,
27 individuals or organizations who contract with the Department
28 of Human Services (as successor to the Department of Mental
29 Health and Developmental Disabilities) to provide services
30 including but not limited to treatment and other services for
31 sexually violent persons, individuals or organizations who

1 contract with the Department of Military Affairs for youth
2 programs, individuals or organizations who contract to
3 perform carnival and amusement ride safety inspections for
4 the Department of Labor, individual representatives of or
5 designated organizations authorized to represent the Office
6 of State Long-Term Ombudsman for the Department on Aging,
7 individual representatives of or organizations designated by
8 the Department on Aging in the performance of their duties as
9 elder abuse provider agencies or regional administrative
10 agencies under the Elder Abuse and Neglect Act, individuals
11 or organizations who perform volunteer services for the State
12 where such volunteer relationship is reduced to writing,
13 individuals who serve on any public entity (whether created
14 by law or administrative action) described in paragraph (a)
15 of this Section, individuals or not for profit organizations
16 who, either as volunteers, where such volunteer relationship
17 is reduced to writing, or pursuant to contract, furnish
18 professional advice or consultation to any agency or
19 instrumentality of the State, individuals who serve as foster
20 parents for the Department of Children and Family Services
21 when caring for a Department ward, and individuals who serve
22 as arbitrators pursuant to Part 10A of Article II of the Code
23 of Civil Procedure and the rules of the Supreme Court
24 implementing Part 10A, each as now or hereafter amended, but
25 does not mean an independent contractor except as provided in
26 this Section. The term includes an individual appointed as an
27 inspector by the Director of State Police when performing
28 duties within the scope of the activities of a Metropolitan
29 Enforcement Group or a law enforcement organization
30 established under the Intergovernmental Cooperation Act. The
31 term includes any designated persons providing services in
32 connection with a contract at a Department of Corrections'
33 facility when the Director of the Department of Corrections
34 determines the designation to be in the best interest of the

1 State. An individual who renders professional advice and
2 consultation to the State through an organization which
3 qualifies as an "employee" under the Act is also an employee.
4 The term includes the estate or personal representative of an
5 employee.

6 (c) The term "pension fund" means a retirement system or
7 pension fund created under the Illinois Pension Code.
8 (Source: P.A. 90-793, eff. 8-14-98; 91-726, eff. 6-2-00.)

9 (5 ILCS 350/2) (from Ch. 127, par. 1302)

10 Sec. 2. Representation and indemnification of State
11 employees.

12 (a) In the event that any civil proceeding is commenced
13 against any State employee arising out of any act or omission
14 occurring within the scope of the employee's State
15 employment, the Attorney General shall, upon timely and
16 appropriate notice to him by such employee, appear on behalf
17 of such employee and defend the action; provided that the
18 Attorney General may not represent and the State may not
19 indemnify (i) an organization that contracts with the State
20 or (ii) persons who render services under such a contract, in
21 any civil proceeding brought by one against the other. In
22 the event that any civil proceeding is commenced against any
23 physician who is an employee of the Department of Corrections
24 or the Department of Human Services (in a position relating
25 to the Department's mental health and developmental
26 disabilities functions) alleging death or bodily injury or
27 other injury to the person of the complainant resulting from
28 and arising out of any act or omission occurring on or after
29 December 3, 1977 within the scope of the employee's State
30 employment, or against any physician who is an employee of
31 the Department of Veterans' Affairs alleging death or bodily
32 injury or other injury to the person of the complainant
33 resulting from and arising out of any act or omission

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

32 (b) In the event that the Attorney General determines
33 that so appearing and defending an employee either (1)
34 involves an actual or potential conflict of interest, or (2)

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

25 In the event that the defendant in the proceeding is an
26 elected State official, including members of the General
27 Assembly, the elected State official may retain his or her
28 attorney, provided that said attorney shall be reasonably
29 acceptable to the Attorney General. In such case the State
30 shall pay the elected State official's court costs,
31 litigation expenses, and attorneys' fees, to the extent
32 approved by the Attorney General as reasonable, as they are
33 incurred.

34 (b-5) The Attorney General may file a counterclaim on

1 behalf of a State employee, provided:

2 (1) the Attorney General determines that the State
3 employee is entitled to representation in a civil action
4 under this Section;

5 (2) the counterclaim arises out of any act or
6 omission occurring within the scope of the employee's
7 State employment that is the subject of the civil action;
8 and

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

17 (c) Notwithstanding any other provision of this Section,
18 representation and indemnification of a judge under this Act
19 shall also be provided in any case where the plaintiff seeks
20 damages or any equitable relief as a result of any decision,
21 ruling or order of a judge made in the course of his or her
22 judicial or administrative duties, without regard to the
23 theory of recovery employed by the plaintiff.
24 Indemnification shall be for all damages awarded and all
25 court costs, attorney fees and litigation expenses assessed
26 against the judge. When a judge has been convicted of a crime
27 as a result of his or her intentional judicial misconduct in
28 a trial, that judge shall not be entitled to indemnification
29 and representation under this subsection in any case
30 maintained by a party who seeks damages or other equitable
31 relief as a direct result of the judge's intentional judicial
32 misconduct.

33 (d) In any such proceeding where notice in accordance
34 with this Section has been given to the Attorney General,

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

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

27 (ii) Upon entry of a final judgment against the
28 employee, or upon the settlement of the claim, the employee
29 shall cause to be served a copy of such judgment or
30 settlement, personally or by certified or registered mail
31 within thirty days of the date of entry or settlement, upon
32 the chief administrative officer of the department, office or
33 agency in which he is employed. If not inconsistent with the
34 provisions of this Section, such judgment or settlement shall

1 be certified for payment by such chief administrative officer
2 and by the Attorney General. The judgment or settlement
3 shall be paid from the State Treasury on the warrant of the
4 Comptroller out of appropriations made to the Department of
5 Central Management Services specifically designed for the
6 payment of claims covered by this Section.

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

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

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

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

21 (j) The amendatory changes made to this Section by this
22 amendatory Act of 1986 shall apply to all proceedings filed
23 on or after the effective date of this amendatory Act of 1986
24 and to any proceeding pending on its effective date, if the
25 State employee gives notice to the Attorney General as
26 provided in this Section within 30 days of the effective date
27 of this amendatory Act of 1986.

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

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.