97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1888


SYNOPSIS AS INTRODUCED:

See Index

Re-enacts and repeals various statutory provisions to eliminate changes that were made by Public Act 89-7, which was held to be void in its entirety by the Illinois Supreme Court in *Best v. Taylor Machine Works*. Repeals a provision of the Code of Civil Procedure concerning standards for economic and non-economic damages that was added by Public Act 94-677 and was specifically declared unconstitutional by the Illinois Supreme Court in *Lebron v. Gottlieb Memorial Hospital* and the *Sorry Works! Pilot Program Act*, which was declared unconstitutional because of the inseverability clause contained in Public Act 94-677. Effective immediately.

LRB097 05170 AMC 45217 b

FISCAL NOTE ACT

MAY APPLY
AN ACT concerning civil actions.

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

Section 1. Purpose.

(a) In *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), the Illinois Supreme Court held that Public Act 89-7 was void in its entirety.

The Illinois Supreme Court, in *Lebron v. Gottlieb Memorial Hospital*, found that the limitations on noneconomic damages in medical malpractice actions that were created in Public Act 94-677, contained in Section 2-1706.5 of the Code of Civil Procedure, violate the separation of powers clause of the Illinois Constitution. Because Public Act 94-677 contained an inseverability provision, the Court held the Act to be void in its entirety. The Court emphasized, however, that "because the other provisions contained in Public Act 94-677 are deemed invalid solely on inseverability grounds, the legislature remains free to reenact any provisions it deems appropriate".

(b) The purpose of this Act is to (i) re-enact and repeal statutory provisions so the text of those provisions conforms to the decision of the Illinois Supreme Court in *Best v. Taylor Machine Works* and (ii) repeal Section 2-1706.5 of the Code of Civil Procedure, which was specifically declared unconstitutional by the court in *Lebron v. Gottlieb Memorial Hospital*. 
Hospital, and the Sorry Works! Pilot Program Act, which was declared unconstitutional because of the inseverability clause contained in Public Act 94-677.

(c) This Act is not intended to supersede any Public Act of the 97th General Assembly that amends the text of a statutory provision that appears in this Act.

(d) If a Public Act enacted after Public Act 89-7 amended the text of a Section of the statutes without including the changes made by Public Act 89-7, the text of that Section is shown in this Act as existing text (without striking and underscoring) to conform to the decision of the Illinois Supreme Court, with the exception of changes of a revisory nature.

(e) If no Public Act enacted after Public Act 89-7 has amended the text of a Section that was included in Public Act 89-7, the text of that Section is re-enacted in this Act with striking and underscoring to conform to the decision of the Illinois Supreme Court.

(f) Provisions that were purportedly added to the statutes by Public Act 89-7 are repealed in this Act to conform to the decision of the Illinois Supreme Court.

(g) Provisions that were purportedly repealed by Public Act 89-7 are re-enacted (without striking and underscoring) to conform to the decision of the Illinois Supreme Court.

(h) If Public Act 89-7 purportedly amended the text of a Section of the statutes and that Section of the statutes was
later repealed by another Public Act, the text of that Section is not shown in this Act.

Section 5. The Road Worker Safety Act is re-enacted as follows:

(430 ILCS 105/Act title)
An Act to protect workers and the general public from injury or death during construction or repair of bridges and highways within the State of Illinois.

(430 ILCS 105/0.01) (from Ch. 121, par. 314.01)
Sec. 0.01. Short title. This Act may be cited as the Road Worker Safety Act.
(Source: P.A. 86-1324; P.A. 89-7.)

(430 ILCS 105/1) (from Ch. 121, par. 314.1)
Sec. 1. All construction work upon bridges or highways within the State of Illinois shall be so performed and conducted that two-way traffic will be maintained when such is safe and practical, and when not safe and practical, or when any portion of the highway is obstructed, one-way traffic shall be maintained, unless the authorized agency in charge of said construction directs the road be closed to all traffic.
(Source: Laws 1959, p. 2044; P.A. 89-7.)
Sec. 2. At all times during which men are working where one-way traffic is utilized, the contractor or his authorized agent in charge of such construction will be required to furnish no fewer than two flagmen, one at each end of the portion of highway or bridge on which only one-way traffic is permitted, and at least 100 feet away from the nearest point of the highway or bridge on which only one-way traffic is safe and permitted. The flagmen shall be equipped with safe, suitable, and proper signal devices as prescribed in the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Department of Transportation, and shall so use such devices as to inform approaching motorists to stop or proceed. In addition, safe, suitable, and proper signals and signs as prescribed in the Manual shall be so placed as to warn approaching persons of the existence of any portion of highway or bridge upon which only one-way traffic is safe and permitted. At bridge construction or bridge repair sites, where one-way traffic is utilized, traffic control signals conforming to the Manual may be installed and operated in lieu of, or in addition to, flagmen. Whenever the Department of Transportation or local authorities determine that a bridge or highway construction site requires the closing of a road to through traffic, the contract documents relating to such construction may specify alternate procedures for flagging and controlling traffic, when such procedures have been approved by
the Department. When alternate procedures are not included, traffic control and flagging will be as prescribed in the first paragraph of this Section.

(Source: P.A. 82-408; 89-7.)

(430 ILCS 105/3) (from Ch. 121, par. 314.3)
Sec. 3. Drivers of any motor vehicle approaching any section of highway or bridge which is limited to only one-way traffic shall obey warning signs and shall stop their vehicles if signaled to do so by a flagman or a traffic control signal.

(Source: Laws 1967, p. 468; P.A. 89-7.)

(430 ILCS 105/4) (from Ch. 121, par. 314.4)
Sec. 4. Any portion of highway or bridge which is closed to all traffic shall be marked at each place where vehicles have accessible approach to such portion of highway or bridge, and at a sufficient distance from the closed portion of such highway or bridge shall be marked with an adequate number of safe, suitable, and proper warning signs, signals or barricades as set forth in the Manual of Uniform Traffic Control Devices for Streets and Highways published by the Department of Transportation so as to give warning to approaching motorists that such portion of bridge or highway is closed and unsafe for travel.

(Source: P.A. 77-176; 89-7.)
Sec. 5. Any contractor, subcontractor, or his authorized agent in charge of construction work on highways or bridges within the State of Illinois, or any driver of any motor vehicle, who knowingly or wilfully violates any provision of this Act, is guilty of a petty offense.

(Source: P.A. 77-2242; 89-7.)

Sec. 6. Any contractor, subcontractor, or his or her authorized agent or driver of any motor vehicle who knowingly or wilfully violates any provision of this Act, shall be responsible for any injury to person or property occasioned by such violation, and a right of action shall accrue to any person injured for any damages sustained thereby; and in case of loss of life by reason of such violation, a right of action shall accrue to the surviving spouse of the person so killed, his or her heirs, or to any person or persons who were, before such loss of life, dependent for support on the person so killed, for a like recovery of damages sustained by reason of such loss of life.

(Source: P.A. 80-1154; 89-7.)

Sec. 7. In case of any failure to comply with any of the provisions of this Act, the Director of Labor may, through the
State's Attorney, or any other attorney in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith.

(Source: Laws 1959, p. 2044; P.A. 89-7.)

(430 ILCS 105/8) (from Ch. 121, par. 314.8)

Sec. 8. The provisions of this Act shall not apply to employees or officials of the State of Illinois or any other public agency engaged in the construction or maintenance of highways and bridges.

(Source: Laws 1959, p. 2044; P.A. 89-7.)

(710 ILCS 45/Act rep.)

Section 10. The Sorry Works! Pilot Program Act is repealed.

Section 15. Section 5-5-7 of the Unified Code of Corrections is re-enacted as follows:

(730 ILCS 5/5-5-7) (from Ch. 38, par. 1005-5-7)

Sec. 5-5-7. Neither the State, any local government, probation department, public or community service program or site, nor any official, volunteer, or employee thereof acting in the course of their official duties shall be liable for any injury or loss a person might receive while performing public or community service as ordered either (1) by the court or (2) by any duly authorized station or probation adjustment, teen
court, community mediation, or other administrative diversion program authorized by the Juvenile Court Act of 1987 for a violation of a penal statute of this State or a local government ordinance (whether penal, civil, or quasi-criminal) or for a traffic offense, nor shall they be liable for any tortious acts of any person performing public or community service, except for wilful, wanton misconduct or gross negligence on the part of such governmental unit, probation department, or public or community service program or site, or the official, volunteer, or employee.

(Source: P.A. 91-820, eff. 6-13-00.)

Section 20. Sections 2-402, 2-604.1, 2-621, 2-1003, 2-1107.1, 2-1109, 2-1116, 2-1117, 2-1118, 2-1205.1, 2-1702, 8-802, 8-2001, 8-2003, 8-2501, 13-213, 13-214.3, and 13-217 of the Code of Civil Procedure are re-enacted as follows:

(735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

Sec. 2-402. Respondents in discovery. The plaintiff in any civil action may designate as respondents in discovery in his or her pleading those individuals or other entities, other than the named defendants, believed by the plaintiff to have information essential to the determination of who should properly be named as additional defendants in the action.

Persons or entities so named as respondents in discovery shall be required to respond to discovery by the plaintiff in
the same manner as are defendants and may, on motion of the
plaintiff, be added as defendants if the evidence discloses the
existence of probable cause for such action.

A person or entity named a respondent in discovery may upon
his or her own motion be made a defendant in the action, in
which case the provisions of this Section are no longer
applicable to that person.

A copy of the complaint shall be served on each person or
entity named as a respondent in discovery.

Each respondent in discovery shall be paid expenses and
fees as provided for witnesses.

A person or entity named as a respondent in discovery in
any civil action may be made a defendant in the same action at
any time within 6 months after being named as a respondent in
discovery, even though the time during which an action may
otherwise be initiated against him or her may have expired
during such 6 month period. An extension from the original
6-month period for good cause may be granted only once for up
to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
good cause. Notwithstanding the limitations in this Section,
the court may grant additional reasonable extensions from this
6-month period for a failure or refusal on the part of the
respondent to comply with timely filed discovery.

The plaintiff shall serve upon the respondent or
respondents a copy of the complaint together with a summons in
a form substantially as follows:
STATE OF ILLINOIS

COUNTY OF ..................

IN THE CIRCUIT COURT OF ................ COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
(or, In the Circuit Court of the ............. Judicial Circuit)

Plaintiff(s),

v. No.

.................

.................,

Defendant(s),

and PLEASE SERVE:

.................

.................,

Respondent(s) in Discovery.

SUMMONS FOR DISCOVERY

TO RESPONDENT IN DISCOVERY:

YOU ARE HEREBY NOTIFIED that on ................., 20..... , a complaint, a copy of which is attached, was filed in the
above Court naming you as a Respondent in Discovery. Pursuant
to the Illinois Code of Civil Procedure Section 2-402 and
Supreme Court Rules 201 et. seq., and/or Court Order entered on

..............

the above named
Plaintiff(s) are authorized to proceed with the discovery of
the named Respondent(s) in Discovery.

YOU ARE SUMMONED AND COMMANDED to appear for deposition,
before a notary public (answer the attached written
interrogatories), (respond to the attached request to
produce), (or other appropriate discovery tool).

We are scheduled to take the oral discovery deposition of the
above named Respondent, ........................................, on

........................., 20..., at the hour of ..... a.m./p.m.,
at the office

................................., Illinois, in
accordance with the rules and provisions of this Court. Witness
and mileage fees in the amount of .................. are attached (or)

(serve the following interrogatories, request to produce, or
other appropriate discovery tool upon Respondent,

................................. to be answered under oath by
Respondent, ................................., and delivered to the
office of ................................., Illinois, within
28 days from date of service).

TO THE OFFICER/SPECIAL PROCESS SERVER:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement or affidavit of service and fees and an endorsement or affidavit of payment to the Respondent of witness and mileage fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed.

WITNESS, ....................

..............................

Clerk of Court

Date of Service: .........., 20...

(To be inserted by officer on copy left with Respondent or other person)

Attorney No.

Name:

Attorney for:

Address:

City/State/Zip:

Telephone:"

This amendatory Act of the 94th General Assembly applies to
causes of action pending on or after its effective date.
(Source: P.A. 94-582, eff. 1-1-06.)

(735 ILCS 5/2-604.1) (from Ch. 110, par. 2-604.1)

Sec. 2-604.1. Pleading of punitive damages. In all actions
on account of bodily injury or physical damage to property,
based on negligence, or product liability based on any theory
or doctrine strict tort liability, where punitive damages are
permitted no complaint shall be filed containing a prayer for
relief seeking punitive damages. However, a plaintiff may,
pursuant to a pretrial motion and after a hearing before the
court, amend the complaint to include a prayer for relief
seeking punitive damages. The court shall allow the motion to
amend the complaint if the plaintiff establishes at such
hearing a reasonable likelihood of proving facts at trial
sufficient to support an award of punitive damages. Any motion
to amend the complaint to include a prayer for relief seeking
punitive damages shall be made not later than 30 days after the
close of discovery. A prayer for relief added pursuant to this
Section shall not be barred by lapse of time under any statute
prescribing or limiting the time within which an action may be
brought or right asserted if the time prescribed or limited had
not expired when the original pleading was filed.
(Source: P.A. 84-1431; 89-7.)

(735 ILCS 5/2-621) (from Ch. 110, par. 2-621)
Sec. 2-621. Product liability actions. (a) In any product liability action based on any theory or doctrine in whole or in part on the doctrine of strict liability in tort commenced or maintained against a defendant or defendants other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing injury, death or damage. The commencement of a product liability action based on any theory or doctrine in whole or in part on the doctrine of strict liability in tort against such defendant or defendants shall toll the applicable statute of limitation and statute of repose relative to the defendant or defendants for purposes of asserting a strict liability in tort cause of action.

(b) Once the plaintiff has filed a complaint against the manufacturer or manufacturers, and the manufacturer or manufacturers have or are required to have answered or otherwise pleaded, the court shall order the dismissal of a product liability action based on any theory or doctrine strict liability in tort claim against the certifying defendant or defendants, provided the certifying defendant or defendants are not within the categories set forth in subsection (c) of this Section. Due diligence shall be exercised by the certifying defendant or defendants in providing the plaintiff with the correct identity of the manufacturer or manufacturers, and due diligence shall be exercised by the plaintiff in filing
an action and obtaining jurisdiction over the manufacturer or
manufacturers.

The plaintiff may at any time subsequent to the dismissal
move to vacate the order of dismissal and reinstate the
certifying defendant or defendants, provided plaintiff can
show one or more of the following:

(1) That the applicable period of statute of limitation or
statute of repose bars the assertion of a strict liability in
tort cause of action against the manufacturer or manufacturers
of the product allegedly causing the injury, death or damage; or

(2) That the identity of the manufacturer given to the
plaintiff by the certifying defendant or defendants was
incorrect. Once the correct identity of the manufacturer has
been given by the certifying defendant or defendants the court
shall again dismiss the certifying defendant or defendants; or

(3) That the manufacturer no longer exists, cannot be
subject to the jurisdiction of the courts of this State, or,
despite due diligence, the manufacturer is not amenable to
service of process; or

(4) That the manufacturer is unable to satisfy any judgment
as determined by the court; or

(5) That the court determines that the manufacturer would
be unable to satisfy a reasonable settlement or other agreement
with plaintiff.

(c) A court shall not enter a dismissal order relative to
any certifying defendant or defendants other than the manufacturer even though full compliance with subsection (a) of this Section has been made where the plaintiff can show one or more of the following:

(1) That the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury, death or damage; or

(2) That the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or

(3) That the defendant created the defect in the product which caused the injury, death or damage.

(d) Nothing contained in this Section shall be construed to grant a cause of action on strict liability in tort or any other legal theory, or to affect the right of any person to seek and obtain indemnity or contribution.

(e) This Section applies to all causes of action accruing on or after September 24, 1979.

(Source: P.A. 84-1043; 89-7.)

(735 ILCS 5/2-1003) (from Ch. 110, par. 2-1003)

Sec. 2-1003. Discovery and depositions.

(a) Any party who by pleading alleges any claim for bodily injury or disease, including mental health injury or disease, shall be deemed to waive any privilege between the injured
person and each health care provider who has furnished care at any time to the injured person. "Health care provider" means any person or entity who delivers or has delivered health care services, including diagnostic services, and includes, but is not limited to, physicians, psychologists, chiropractors, nurses, mental health workers, therapists, and other healing art practitioners. Any party alleging any such claim for bodily or mental health injury or disease shall, upon written request of any other party who has appeared in the action, sign and deliver within 28 days to the requesting party a separate Consent authorizing each person or entity who has provided health care at any time to the allegedly injured person to:

(1) furnish the requesting party or the party's attorney a complete copy of the chart or record of health care in the possession of the provider, including reports sent to any third party, including any records generated by other health care providers and in the possession of the health care provider, and including radiographic films of any type;

(2) permit the requesting party or the party's attorney to inspect the original chart or record of health care during regular business hours and at the regular business location of the health care provider, upon written request made not less than 7 days prior to the inspection;

(3) accept and consider charts and other records of health care by others, radiographic films, and documents,
including reports, deposition transcripts, and letters, furnished to the health care provider by the requesting party or the party's attorney, before giving testimony in any deposition or trial or other hearing;

(4) confer with the requesting party's attorney before giving testimony in any deposition or trial or other hearing and engage in discussion with the attorney on the subjects of the health care provider's observations related to the allegedly injured party's health, including the following: the patient history, whether charted or otherwise recorded or not; the health care provider's opinions related to the patient's state of health, prognosis, etiology, or cause of the patient's state of health at any time, and the nature and quality of care by other health care providers, including whether any standard of care was or was not breached, and the testimony the health care provider would give in response to any point of interrogation, and the education, experience, and qualifications of the health care provider.

The form of the Consent furnished pursuant to this subsection (a) shall recite that it is signed and delivered under the authority of this subsection. Any variation in the form of the Consent required by any health care provider, not subject to the jurisdiction of the circuit court before which the action is pending, to whom a request is directed under subdivision (1) or (2) of this subsection (a) shall be accepted
by the allegedly injured party and the revised form requested by the health care provider shall be signed and delivered to the requesting party within 28 days after it is tendered for signature.

All documents and information obtained pursuant to a Consent shall be considered confidential. Disclosure may be made only to the parties to the action, their attorneys, their insurers' representatives, and witnesses and consultants whose testimony concerns medical treatment prognosis, or rehabilitation, including expert witnesses.

A request for a Consent under this subsection (a) does not preclude such subsequent requests as may reasonably be made seeking to expand the scope of an earlier Consent which was limited to less than all the authority permitted by subdivisions (1) through (4) of this subsection (a) or seeking additional Consents for other health care providers.

The provisions of this subsection (a) do not restrict the right of any party to discovery pursuant to rule.

Should a plaintiff refuse to timely comply with a request for signature and delivery of a consent permitted by this subsection (a) the court, on motion, shall issue an order authorizing disclosure to the party or parties requesting said consent of all records and information mentioned herein or order the cause dismissed pursuant to Section 2-619(a)(9).

(a-1) Discovery, admissions of fact and of genuineness of documents and answers to interrogatories shall be in accordance
with rules.

(b) The taking of depositions, whether for use in evidence or for purposes of discovery in proceedings in this State or elsewhere, and fees and charges in connection therewith, shall be in accordance with rules.

(c) A party shall not be required to furnish the names or addresses of his or her witnesses, except that upon motion of any party disclosure of the identity of expert witnesses shall be made to all parties and the court in sufficient time in advance of trial so as to insure a fair and equitable preparation of the case by all parties.

(d) Whenever the defendant in any litigation in this State has the right to demand a physical or mental examination of the plaintiff pursuant to statute or Supreme Court Rule, relative to the occurrence and extent of injuries or damages for which claim is made, or in connection with the plaintiff's capacity to exercise any right plaintiff has, or would have but for a finding based upon such examination, the plaintiff has the right to have his or her attorney, or such other person as the plaintiff may wish, present at such physical or mental examination.

(e) No person or organization shall be required to furnish claims, loss or risk management information held or provided by an insurer, which information is described in Section 143.10a of the "Illinois Insurance Code".

(f) This amendatory Act of 1995 applies to causes of action
Sec. 2-1107.1. Jury instruction in tort actions. In all actions on account of bodily injury or death or physical damage to property based on negligence, or product liability based on any theory or doctrine strict tort liability, the court shall instruct the jury in writing, to the extent that it is true, that any award of compensatory damages or punitive damages will not be taxable under federal or State income tax law. The court shall not inform or instruct the jury that the defendant shall be found not liable if the jury finds that the contributory fault of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought, but it shall be the duty of the court to deny recovery if the jury finds that the plaintiff's contributory fault is more than 50% of the proximate cause of the injury or damage. The court shall not inform or instruct the jury concerning any limitations in the amount of non-economic damages or punitive damages that are recoverable, but it shall be the duty of the trial court upon entering judgment to reduce any award in excess of such limitation to no more than the proper limitation.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date.

(Source: P.A. 84-1431; 89-7.)
Sec. 2-1109. Itemized verdicts. In every case where damages for bodily injury or death to the person are assessed by the jury the verdict shall be itemized so as to reflect the monetary distribution, if any, among economic loss and non-economic loss as defined in Section 2-1115.2, if any, and, in healing art medical malpractice cases, further itemized so as to reflect the distribution of economic loss by category, such itemization of economic loss by category to include: (a) amounts intended to compensate for reasonable expenses which have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or other health or rehabilitative services, drugs, and therapy; (b) amounts intended to compensate for lost wages or loss of earning capacity; and (c) all other economic losses claimed by the plaintiff or granted by the jury. Each category of economic loss shall be further itemized into amounts intended to compensate for losses which have been incurred prior to the verdict and amounts intended to compensate for future losses which will be incurred in the future.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date.

(Source: P.A. 84-7; 89-7.)
Sec. 2-1116. Limitation on recovery in tort actions; fault.

(a) The purpose of this Section is to allocate the responsibility of bearing or paying damages in actions brought on account of death, bodily injury, or physical damage to property according to the proportionate fault of the persons who proximately caused the damage.

(b) As used in this Section:

"Fault" means any act or omission that (i) is negligent, willful and wanton, or reckless, is a breach of an express or implied warranty, gives rise to strict liability in tort, or gives rise to liability under the provisions of any State statute, rule, or local ordinance and (ii) is a proximate cause of death, bodily injury to person, or physical damage to property for which recovery is sought.

"Contributory fault" means any fault on the part of the plaintiff (including but not limited to negligence, assumption of the risk, or willful and wanton misconduct) which is a proximate cause of the death, bodily injury to person, or physical damage to property for which recovery is sought.

"Tortfeasor" means any person, excluding the injured person, whose fault is a proximate cause of the death, bodily injury to person, or physical damage to property for which recovery is sought, regardless of whether that person is the plaintiff's employer, regardless of whether that person is joined as a party to the action, and regardless of whether that person may have settled with the plaintiff.
In all actions on account of death, bodily injury or death or physical damage to property in which recovery is predicated upon fault, based on negligence, or product liability based on strict tort liability, the contributory fault chargeable to the plaintiff shall be compared with the fault of all tortfeasors whose fault was a proximate cause of the death, injury, loss, or damage for which recovery is sought. The plaintiff shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought. The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any economic or non-economic damages allowed shall be diminished in the proportion to the amount of fault attributable to the plaintiff.

(d) Nothing in this Section shall be construed to create a cause of action.

(e) This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

(Source: P.A. 84-1431; 89-7.)

(735 ILCS 5/2-1117) (from Ch. 110, par. 2-1117)
Sec. 2-1117. Joint liability. Except as provided in Section
2-1118, in actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, all defendants found liable are jointly and severally liable for plaintiff's past and future medical and medically related expenses. Any defendant whose fault, as determined by the trier of fact, is less than 25% of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendant except the plaintiff's employer, shall be severally liable for all other damages. Any defendant whose fault, as determined by the trier of fact, is 25% or greater of the total fault attributable to the plaintiff, the defendants sued by the plaintiff, and any third party defendants except the plaintiff's employer, shall be jointly and severally liable for all other damages.

(Source: P.A. 93-10, eff. 6-4-03; 93-12, eff. 6-4-03.)

(735 ILCS 5/2-1118)

Sec. 2-1118. Exceptions. Notwithstanding the provisions of Section 2-1117, in any action in which the trier of fact determines that the injury or damage for which recovery is sought was caused by an act involving the discharge into the environment of any pollutant, including any waste, hazardous substance, irritant or contaminant, including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, asbestos, toxic or corrosive chemicals, radioactive waste or mine tailings, and
including any such material intended to be recycled, reconditioned or reclaimed, any defendants found liable shall be jointly and severally liable for such damage. However, Section 2-1117 shall apply to a defendant who is a response action contractor. As used in this Section, "response action contractor" means an individual, partnership, corporation, association, joint venture or other commercial entity or an employee, agent, sub-contractor, or consultant thereof which enters into a contract, for the performance of remedial or response action, or for the identification, handling, storage, treatment or disposal of a pollutant, which is entered into between any person or entity and a response action contractor when such response action contractor is not liable for the creation or maintenance of the condition to be ameliorated under the contract.

Notwithstanding the provisions of Section 2-1117, in any medical malpractice action, as defined in Section 2-1704, based upon negligence, any defendants found liable shall be jointly and severally liable.

(Source: P.A. 84-1431; 89-7.)

(735 ILCS 5/2-1205.1) (from Ch. 110, par. 2-1205.1)

Sec. 2-1205.1. Reduction in amount of recovery. In all cases on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on any theory or doctrine strict tort liability, to which Section
2-1205 does not apply, the amount in excess of $25,000 of the
benefits provided for medical charges, hospital charges, or
nursing or caretaking charges, which have been paid, or which
have become payable by the date of judgment to the injured
person by any other insurance company or fund in relation to a
particular injury, shall be deducted from any judgment.
Provided, however, that:

(1) Application is made within 30 days to reduce the
judgment;

(2) Such reduction shall not apply to the extent that there
is a right of recoupment through subrogation, trust agreement,
contract, lien, operation of law or otherwise;

(3) The reduction shall not reduce the judgment by more
than 50% of the total amount of the judgment entered on the
verdict; and

(4) The damages awarded shall be increased by the amount of
any insurance premiums or the direct costs paid by the
plaintiff for such benefits in the 2 years prior to plaintiff's
injury or death or to be paid by the plaintiff in the future
for such benefits.

(Source: P.A. 84-1431; 89-7.)

(735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)
Sec. 2-1702. Economic/Non-Economic Loss. As used in this
Part, "economic loss" and "non-economic loss" are defined as in
Section 2-1115.2.
(a) "Economic loss" means all pecuniary harm for which damages are recoverable.

(b) "Non-economic loss" means loss of consortium and all nonpecuniary harm for which damages are recoverable, including, without limitation, damages for pain and suffering, inconvenience, disfigurement, and physical impairment.

(Source: P.A. 84-7; 89-7.)

(735 ILCS 5/8-802) (from Ch. 110, par. 8-802)

Sec. 8-802. Physician and patient. No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the physician for malpractice, (3) with the expressed consent of the patient, or in case of his or her death or disability, of his or her personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his or her life, health, or physical condition, (4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of
a document as a will of the patient, (6) in any criminal action
where the charge is either first degree murder by abortion,
attempted abortion or abortion, (7) in actions, civil or
criminal, arising from the filing of a report in compliance
with the Abused and Neglected Child Reporting Act, (8) to any
department, agency, institution or facility which has custody
of the patient pursuant to State statute or any court order of
commitment, (9) in prosecutions where written results of blood
alcohol tests are admissible pursuant to Section 11-501.4 of
the Illinois Vehicle Code, (10) in prosecutions where written
results of blood alcohol tests are admissible under Section
5-11a of the Boat Registration and Safety Act, (11) in criminal
actions arising from the filing of a report of suspected
terrorist offense in compliance with Section 29D-10(p)(7) of
the Criminal Code of 1961, or (12) upon the issuance of a
subpoena pursuant to Section 38 of the Medical Practice Act of
1987; the issuance of a subpoena pursuant to Section 25.1 of
the Illinois Dental Practice Act; or the issuance of a subpoena
pursuant to Section 22 of the Nursing Home Administrators
Licensing and Disciplinary Act.

In the event of a conflict between the application of this
Section and the Mental Health and Developmental Disabilities
Confidentiality Act to a specific situation, the provisions of
the Mental Health and Developmental Disabilities
Confidentiality Act shall control.

(Source: P.A. 95-478, eff. 8-27-07.)
(735 ILCS 5/8-2001) (from Ch. 110, par. 8-2001)

Sec. 8-2001. Examination of health care records.

(a) In this Section:

"Health care facility" or "facility" means a public or private hospital, ambulatory surgical treatment center, nursing home, independent practice association, or physician hospital organization, or any other entity where health care services are provided to any person. The term does not include a health care practitioner.

"Health care practitioner" means any health care practitioner, including a physician, dentist, podiatrist, advanced practice nurse, physician assistant, clinical psychologist, or clinical social worker. The term includes a medical office, health care clinic, health department, group practice, and any other organizational structure for a licensed professional to provide health care services. The term does not include a health care facility.

(b) Every private and public health care facility shall, upon the request of any patient who has been treated in such health care facility, or any person, entity, or organization presenting a valid authorization for the release of records signed by the patient or the patient's legally authorized representative, permit the patient, his or her health care practitioner, authorized attorney, or any person, entity, or organization presenting a valid authorization for the release
of records signed by the patient or the patient's legally
authorized representative to examine the health care facility
patient care records, including but not limited to the history,
bedside notes, charts, pictures and plates, kept in connection
with the treatment of such patient, and permit copies of such
records to be made by him or her or his or her health care
practitioner or authorized attorney.

(c) Every health care practitioner shall, upon the request
of any patient who has been treated by the health care
practitioner, or any person, entity, or organization
presenting a valid authorization for the release of records
signed by the patient or the patient's legally authorized
representative, permit the patient and the patient's health
care practitioner or authorized attorney, or any person,
entity, or organization presenting a valid authorization for
the release of records signed by the patient or the patient's
legally authorized representative, to examine and copy the
patient's records, including but not limited to those relating
to the diagnosis, treatment, prognosis, history, charts,
pictures and plates, kept in connection with the treatment of
such patient.

(d) A request for copies of the records shall be in writing
and shall be delivered to the administrator or manager of such
health care facility or to the health care practitioner. The
person (including patients, health care practitioners and
attorneys) requesting copies of records shall reimburse the
facility or the health care practitioner at the time of such
copying for all reasonable expenses, including the costs of
independent copy service companies, incurred in connection
with such copying not to exceed a $20 handling charge for
processing the request and the actual postage or shipping
charge, if any, plus: (1) for paper copies 75 cents per page
for the first through 25th pages, 50 cents per page for the
26th through 50th pages, and 25 cents per page for all pages in
excess of 50 (except that the charge shall not exceed $1.25 per
page for any copies made from microfiche or microfilm; records
retrieved from scanning, digital imaging, electronic
information or other digital format do not qualify as
microfiche or microfilm retrieval for purposes of calculating
charges); and (2) for electronic records, retrieved from a
scanning, digital imaging, electronic information or other
digital format in a electronic document, a charge of 50% of the
per page charge for paper copies under subdivision (d)(1). This
per page charge includes the cost of each CD Rom, DVD, or other
storage media. Records already maintained in an electronic or
digital format shall be provided in an electronic format when
so requested. If the records system does not allow for the
creation or transmission of an electronic or digital record,
then the facility or practitioner shall inform the requester in
writing of the reason the records can not be provided
electronically. The written explanation may be included with
the production of paper copies, if the requester chooses to
order paper copies. These rates shall be automatically adjusted as set forth in Section 8-2006. The facility or health care practitioner may, however, charge for the reasonable cost of all duplication of record material or information that cannot routinely be copied or duplicated on a standard commercial photocopy machine such as x-ray films or pictures.

(e) The requirements of this Section shall be satisfied within 30 days of the receipt of a written request by a patient or by his or her legally authorized representative, health care practitioner, authorized attorney, or any person, entity, or organization presenting a valid authorization for the release of records signed by the patient or the patient's legally authorized representative. If the facility or health care practitioner needs more time to comply with the request, then within 30 days after receiving the request, the facility or health care practitioner must provide the requesting party with a written statement of the reasons for the delay and the date by which the requested information will be provided. In any event, the facility or health care practitioner must provide the requested information no later than 60 days after receiving the request.

(f) A health care facility or health care practitioner must provide the public with at least 30 days prior notice of the closure of the facility or the health care practitioner's practice. The notice must include an explanation of how copies of the facility's records may be accessed by patients. The
notice may be given by publication in a newspaper of general
circulation in the area in which the health care facility or
health care practitioner is located.
(g) Failure to comply with the time limit requirement of
this Section shall subject the denying party to expenses and
reasonable attorneys' fees incurred in connection with any
court ordered enforcement of the provisions of this Section.
(Source: P.A. 94-155, eff. 1-1-06; 95-478, eff. 1-1-08 (changed
from 8-27-07 by P.A. 95-480); 95-480, eff. 1-1-08.)

(735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)
Sec. 8-2501. Expert Witness Standards. In any case in which
the standard of care applicable to a medical professional is at
issue, the court shall apply the following standards to
determine if a witness qualifies as an expert witness and can
testify on the issue of the appropriate standard of care.
(a) Whether the witness is board certified or board
eligible, or has completed a residency, in the same or
substantially similar medical specialties as the defendant and
is otherwise qualified by significant experience with the
standard of care, methods, procedures, and treatments relevant
to the allegations against the defendant;
(b) Whether the witness has devoted a majority of his or
her work time to the practice of medicine, teaching or
University based research in relation to the medical care and
type of treatment at issue which gave rise to the medical
problem of which the plaintiff complains;

(c) whether the witness is licensed in the same profession with the same class of license as the defendant if the defendant is an individual; and

(d) whether, in the case against a nonspecialist, the witness can demonstrate a sufficient familiarity with the standard of care practiced in this State.

An expert shall provide evidence of active practice, teaching, or engaging in university-based research. If retired, an expert must provide evidence of attendance and completion of continuing education courses for 3 years previous to giving testimony. An expert who has not actively practiced, taught, or been engaged in university-based research, or any combination thereof, during the preceding 5 years may not be qualified as an expert witness.

The changes to this Section made by this amendatory Act of the 94th General Assembly apply to causes of action accruing on or after its effective date.

(Source: P.A. 94-677, eff. 8-25-05.)

(735 ILCS 5/13-213) (from Ch. 110, par. 13-213)
Sec. 13-213. Product liability; statute of repose.
(a) As used in this Section, the term:

(1) "alteration, modification or change" or "altered, modified, or changed" means an alteration, modification or change that was made in the original makeup
characteristics, function or design of a product or in the
original recommendations, instructions and warnings given
with respect to a product including the failure properly to
maintain and care for a product.

(2) "product" means any tangible object or goods
distributed in commerce, including any service provided in
connection with the product. Where the term "product unit"
is used, it refers to a single item or unit of a product.

(3) "product liability action" means any action based
on any theory or the doctrine of strict liability in tort
brought against the seller of a product on account of
personal injury, (including illness, disease, disability
and death) or property, economic or other damage allegedly
caused by or resulting from the manufacture, construction,
preparation, assembly, installation, testing, makeup,
characteristics, functions, design, formula, plan,
recommendation, specification, prescription, advertising,
sale, marketing, packaging, labeling, repair, maintenance
or disposal of, or warning or instruction regarding any
product. This definition excludes actions brought by State
or federal regulatory agencies pursuant to statute.

(4) "seller" means one who, in the course of a business
conducted for the purpose, sells, distributes, leases,
assembles, installs, produces, manufactures, fabricates,
prepares, constructs, packages, labels, markets, repairs,
maintains, or otherwise is involved in placing a product in
the stream of commerce.

(b) Subject to the provisions of subsections (c) and (d) no product liability action based on any theory or the doctrine of strict liability in tort shall be commenced except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease or delivery of possession by a seller or 10 years from the date of first sale, lease or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, of any product unit that is claimed to have injured or damaged the plaintiff, unless the defendant expressly has warranted or promised the product for a longer period and the action is brought within that period.

(c) No product liability action based on any theory or the doctrine of strict liability in tort to recover for injury or damage claimed to have resulted from an alteration, modification or change of the product unit subsequent to the date of first sale, lease or delivery of possession of the product unit to its initial user, consumer or other non-seller shall be limited or barred by subsection (b) hereof if:

(1) the action is brought against a seller making, authorizing, or furnishing materials for the accomplishment of such alteration, modification or change (or against a seller furnishing specifications or instructions for the accomplishment of such alteration, modification or change when the injury is claimed to have
resulted from failure to provide adequate specifications or instructions), and

(2) the action commenced within the applicable limitation period and, in any event, within 10 years from the date such alteration, modification or change was made, unless defendant expressly has warranted or promised the product for a longer period and the action is brought within that period, and

(3) when the injury or damage is claimed to have resulted from an alteration, modification or change of a product unit, there is proof that such alteration, modification or change had the effect of introducing into the use of the product unit, by reason of defective materials or workmanship, a hazard not existing prior to such alteration, modification or change.

(d) Notwithstanding the provisions of subsection (b) and paragraph (2) of subsection (c) if the injury complained of occurs within any of the periods provided by subsection (b) and paragraph (2) of subsection (c), the plaintiff may bring an action within 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, of the existence of the personal injury, death or property damage, but in no event shall such action be brought more than 8 years after the date on which such personal injury, death or property damage occurred. In any such case, if the person entitled to bring the action was, at the time the
personal injury, death or property damage occurred, under the age of 18 years, or under a legal disability, then the period of limitations does not begin to run until the person attains the age of 18 years, or the disability is removed.

(e) Replacement of a component part of a product unit with a substitute part having the same formula or design as the original part shall not be deemed a sale, lease or delivery of possession or an alteration, modification or change for the purpose of permitting commencement of a product liability action based on any theory or the doctrine of strict liability in tort to recover for injury or damage claimed to have resulted from the formula or design of such product unit or of the substitute part when such action would otherwise be barred according to the provisions of subsection (b) of this Section.

(f) Nothing in this Section shall be construed to create a cause of action or to affect the right of any person to seek and obtain indemnity or contribution.

(g) The provisions of this Section 13-213 of this Act apply to any cause of action accruing on or after January 1, 1979, involving any product which was in or entered the stream of commerce prior to, on, or after January 1, 1979.

(h) This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

(Source: P.A. 85-907; 86-1329; 89-7.)

(735 ILCS 5/13-214.3) (from Ch. 110, par. 13-214.3)
Sec. 13-214.3. Attorneys.

(a) In this Section: "attorney" includes (i) an individual attorney, together with his or her employees who are attorneys, (ii) a professional partnership of attorneys, together with its employees, partners, and members who are attorneys, and (iii) a professional service corporation of attorneys, together with its employees, officers, and shareholders who are attorneys; and "non-attorney employee" means a person who is not an attorney but is employed by an attorney.

(b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.

(c) Except as provided in subsection (d), an action described in subsection (b) may not be commenced in any event more than 6 years after the date on which the act or omission occurred.

(d) When the injury caused by the act or omission does not occur until the death of the person for whom the professional services were rendered, the action may be commenced within 2 years after the date of the person's death.
unless letters of office are issued or the person's will is
admitted to probate within that 2 year period, in which case
the action must be commenced within the time for filing claims
against the estate or a petition contesting the validity of the
will of the deceased person, whichever is later, as provided in
the Probate Act of 1975.

(e) If the person entitled to bring the action is under the
age of majority or under other legal disability at the time the
cause of action accrues, the period of limitations shall not
begin to run until majority is attained or the disability is
removed.

(f) The provisions of Public Act 86-1371 creating this
Section apply This Section applies to all causes of action
accruing on or after its effective date.

(g) This amendatory Act of 1995 applies to all actions
filed on or after its effective date. If, as a result of this
amendatory Act of 1995, the action is either barred or there
remains less than 2 years to bring the action, then the
individual may bring the action within 2 years of the effective
date of this amendatory Act of 1995.
(Source: P.A. 86-1371; 89-7.)

(735 ILCS 5/13-217) (from Ch. 110, par. 13-217)
Sec. 13-217. Reversal or dismissal. In the actions
specified in Article XIII of this Act or any other act or
contract where the time for commencing an action is limited, if
judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater, after such judgment is reversed or entered against the plaintiff, or after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue. No action which is voluntarily dismissed by the plaintiff or dismissed for want of prosecution by the court may be filed where the time for commencing the action has expired.

This amendatory Act of 1995 applies to causes of action accruing on or after its effective date. (Source: P.A. 87-1252.)

(735 ILCS 5/2-623 rep.)
Section 25. The Code of Civil Procedure is amended by repealing Sections 2-623, 2-624, 2-1115.05, 2-1115.1, 2-1115.2, and 2-1706.5 and Part 21 of Article II.

Section 30. Sections 4 and 5 of the Joint Tortfeasor Contribution Act are re-enacted as follows:

(740 ILCS 100/4) (from Ch. 70, par. 304)

Sec. 4. Rights of Plaintiff Unaffected. Except as provided in Section 3.5 of this Act, a plaintiff's right to recover the full amount of his judgment from any one or more defendants subject to liability in tort for the same injury to person or property, or for wrongful death, is not affected by the provisions of this Act.
(Source: P.A. 81-601; 89-7.)

(740 ILCS 100/5) (from Ch. 70, par. 305)

Sec. 5. Enforcement. Other than in actions for healing art malpractice, a cause of action for contribution among joint tortfeasors is not required to be asserted during the pendency
of litigation brought by a claimant and may be asserted by a separate action before or after payment of a settlement or judgment in favor of the claimant, or may be asserted by counterclaim or by third-party complaint in a pending action.

This amendatory Act of 1995 applies to causes of action filed on or after its effective date.

(Source: P.A. 81-601; 89-7.)

(740 ILCS 100/3.5 rep.)

Section 35. Section 3.5 of the Joint Tortfeasor Contribution Act is repealed.

Section 40. Sections 9 and 10 of the Mental Health and Developmental Disabilities Confidentiality Act are re-enacted as follows:

(740 ILCS 110/9) (from Ch. 91 1/2, par. 809)

Sec. 9. In the course of providing services and after the conclusion of the provision of services, a therapist may disclose a record or communications without consent to:

(1) the therapist's supervisor, a consulting therapist, members of a staff team participating in the provision of services, a record custodian, or a person acting under the supervision and control of the therapist;

(2) persons conducting a peer review of the services being provided;
(3) the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities;

(4) an attorney or advocate consulted by a therapist or agency which provides services concerning the therapist's or agency's legal rights or duties in relation to the recipient and the services being provided; and

(5) the Inspector General of the Department of Children and Family Services when such records or communications are relevant to a pending investigation authorized by Section 35.5 of the Children and Family Services Act where:

(A) the recipient was either (i) a parent, foster parent, or caretaker who is an alleged perpetrator of abuse or neglect or the subject of a dependency investigation or (ii) a non-ward victim of alleged abuse or neglect, and

(B) available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child.

In the course of providing services, a therapist may disclose a record or communications without consent to any department, agency, institution or facility which has custody of the recipient pursuant to State statute or any court order of commitment.

Information may be disclosed under this Section only to the extent that knowledge of the record or communications is essential to the purpose for which disclosure is made and only
after the recipient is informed that such disclosure may be made. A person to whom disclosure is made under this Section shall not redisclose any information except as provided in this Act.

(Source: P.A. 86-955; 90-512, eff. 8-22-97.)

(740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

Sec. 10. (a) Except as provided herein, in any civil, criminal, administrative, or legislative proceeding, or in any proceeding preliminary thereto, a recipient, and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications.

(1) Records and communications may be disclosed in a civil, criminal or administrative proceeding in which the recipient introduces his mental condition or any aspect of his services received for such condition as an element of his claim or defense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal or other action for review of an administrative determination may be taken, finds, after in camera examination of testimony or other evidence, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise clearly admissible; that other satisfactory evidence is demonstrably unsatisfactory as
evidence of the facts sought to be established by such
evidence; and that disclosure is more important to the
interests of substantial justice than protection from
injury to the therapist-recipient relationship or to the
recipient or other whom disclosure is likely to harm.
Except in a criminal proceeding in which the recipient, who
is accused in that proceeding, raises the defense of
insanity, no record or communication between a therapist
and a recipient shall be deemed relevant for purposes of
this subsection, except the fact of treatment, the cost of
services and the ultimate diagnosis unless the party
seeking disclosure of the communication clearly
establishes in the trial court a compelling need for its
production. However, for purposes of this Act, in any
action brought or defended under the Illinois Marriage and
Dissolution of Marriage Act, or in any action in which pain
and suffering is an element of the claim, mental condition
shall not be deemed to be introduced merely by making such
claim and shall be deemed to be introduced only if the
recipient or a witness on his behalf first testifies
concerning the record or communication.

(2) Records or communications may be disclosed in a
civil proceeding after the recipient's death when the
recipient's physical or mental condition has been
introduced as an element of a claim or defense by any party
claiming or defending through or as a beneficiary of the
recipient, provided the court finds, after in camera
examination of the evidence, that it is relevant,
probative, and otherwise clearly admissible; that other
satisfactory evidence is not available regarding the facts
sought to be established by such evidence; and that
disclosure is more important to the interests of
substantial justice than protection from any injury which
disclosure is likely to cause.

(3) In the event of a claim made or an action filed by
a recipient, or, following the recipient's death, by any
party claiming as a beneficiary of the recipient for injury
caused in the course of providing services to such
recipient, the therapist and other persons whose actions
are alleged to have been the cause of injury may disclose
pertinent records and communications to an attorney or
attorneys engaged to render advice about and to provide
representation in connection with such matter and to
persons working under the supervision of such attorney or
attorneys, and may testify as to such records or
communication in any administrative, judicial or discovery
proceeding for the purpose of preparing and presenting a
defense against such claim or action.

(4) Records and communications made to or by a
therapist in the course of examination ordered by a court
for good cause shown may, if otherwise relevant and
admissible, be disclosed in a civil, criminal, or
administrative proceeding in which the recipient is a party or in appropriate pretrial proceedings, provided such court has found that the recipient has been as adequately and as effectively as possible informed before submitting to such examination that such records and communications would not be considered confidential or privileged. Such records and communications shall be admissible only as to issues involving the recipient's physical or mental condition and only to the extent that these are germane to such proceedings.

(5) Records and communications may be disclosed in a proceeding under the Probate Act of 1975, to determine a recipient's competency or need for guardianship, provided that the disclosure is made only with respect to that issue.

(6) Records and communications may be disclosed when such are made during treatment which the recipient is ordered to undergo to render him fit to stand trial on a criminal charge, provided that the disclosure is made only with respect to the issue of fitness to stand trial.

(7) Records and communications of the recipient may be disclosed in any civil or administrative proceeding involving the validity of or benefits under a life, accident, health or disability insurance policy or certificate, or Health Care Service Plan Contract, insuring the recipient, but only if and to the extent that
the recipient's mental condition, or treatment or services
in connection therewith, is a material element of any claim
or defense of any party, provided that information sought
or disclosed shall not be redisclosed except in connection
with the proceeding in which disclosure is made.

(8) Records or communications may be disclosed when
such are relevant to a matter in issue in any action
brought under this Act and proceedings preliminary
thereto, provided that any information so disclosed shall
not be utilized for any other purpose nor be redisclosed
except in connection with such action or preliminary
proceedings.

(9) Records and communications of the recipient may be
disclosed in investigations of and trials for homicide when
the disclosure relates directly to the fact or immediate
circumstances of the homicide.

(10) Records and communications of a deceased
recipient may be disclosed to a coroner conducting a
preliminary investigation into the recipient's death under
Section 3-3013 of the Counties Code. However, records and
communications of the deceased recipient disclosed in an
investigation shall be limited solely to the deceased
recipient's records and communications relating to the
factual circumstances of the incident being investigated
in a mental health facility.

(11) Records and communications of a recipient shall be
disclosed in a proceeding where a petition or motion is filed under the Juvenile Court Act of 1987 and the recipient is named as a parent, guardian, or legal custodian of a minor who is the subject of a petition for wardship as described in Section 2-3 of that Act or a minor who is the subject of a petition for wardship as described in Section 2-4 of that Act alleging the minor is abused, neglected, or dependent or the recipient is named as a parent of a child who is the subject of a petition, supplemental petition, or motion to appoint a guardian with the power to consent to adoption under Section 2-29 of the Juvenile Court Act of 1987.

(12) Records and communications of a recipient may be disclosed when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed may not be used for any other purposes nor may it be redisclosed except in connection with collection activities. Whenever records are disclosed pursuant to this subdivision (12), the recipient of the records shall be advised in writing that any person who discloses mental health records and communications in violation of this Act may be subject to civil liability pursuant to Section 15 of this Act or to
criminal penalties pursuant to Section 16 of this Act or
both.

(b) Before a disclosure is made under subsection (a), any
party to the proceeding or any other interested person may
request an in camera review of the record or communications to
be disclosed. The court or agency conducting the proceeding may
hold an in camera review on its own motion. When, contrary to
the express wish of the recipient, the therapist asserts a
privilege on behalf and in the interest of a recipient, the
court may require that the therapist, in an in camera hearing,
establish that disclosure is not in the best interest of the
recipient. The court or agency may prevent disclosure or limit
disclosure to the extent that other admissible evidence is
sufficient to establish the facts in issue. The court or agency
may enter such orders as may be necessary in order to protect
the confidentiality, privacy, and safety of the recipient or of
other persons. Any order to disclose or to not disclose shall
be considered a final order for purposes of appeal and shall be
subject to interlocutory appeal.

(c) A recipient's records and communications may be
disclosed to a duly authorized committee, commission or
subcommittee of the General Assembly which possesses subpoena
and hearing powers, upon a written request approved by a
majority vote of the committee, commission or subcommittee
members. The committee, commission or subcommittee may request
records only for the purposes of investigating or studying
possible violations of recipient rights. The request shall state the purpose for which disclosure is sought.

The facility shall notify the recipient, or his guardian, and therapist in writing of any disclosure request under this subsection within 5 business days after such request. Such notification shall also inform the recipient, or guardian, and therapist of their right to object to the disclosure within 10 business days after receipt of the notification and shall include the name, address and telephone number of the committee, commission or subcommittee member or staff person with whom an objection shall be filed. If no objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications to the committee, commission or subcommittee. If an objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications only after the committee, commission or subcommittee has permitted the recipient, guardian or therapist to present his objection in person before it and has renewed its request for disclosure by a majority vote of its members.

Disclosure under this subsection shall not occur until all personally identifiable data of the recipient and provider are removed from the records and communications. Disclosure under this subsection shall not occur in any public proceeding.

(d) No party to any proceeding described under paragraphs
(1), (2), (3), (4), (7), or (8) of subsection (a) of this Section, nor his or her attorney, shall serve a subpoena seeking to obtain access to records or communications under this Act unless the subpoena is accompanied by a written order issued by a judge, authorizing the disclosure of the records or the issuance of the subpoena. No such written order shall be issued without written notice of the motion to the recipient and the treatment provider. Prior to issuance of the order, each party or other person entitled to notice shall be permitted an opportunity to be heard pursuant to subsection (b) of this Section. No person shall comply with a subpoena for records or communications under this Act, unless the subpoena is accompanied by a written order authorizing the issuance of the subpoena or the disclosure of the records. Each subpoena duces tecum issued by a court or administrative agency or served on any person pursuant to this subsection (d) shall include the following language: "No person shall comply with a subpoena for mental health records or communications pursuant to Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/10, unless the subpoena is accompanied by a written order that authorizes the issuance of the subpoena and the disclosure of records or communications."

(e) When a person has been transported by a peace officer to a mental health facility, then upon the request of a peace officer, if the person is allowed to leave the mental health
facility within 48 hours of arrival, excluding Saturdays, Sundays, and holidays, the facility director shall notify the local law enforcement authority prior to the release of the person. The local law enforcement authority may re-disclose the information as necessary to alert the appropriate enforcement or prosecuting authority.

(f) A recipient's records and communications shall be disclosed to the Inspector General of the Department of Human Services within 10 business days of a request by the Inspector General (i) in the course of an investigation authorized by the Department of Human Services Act and applicable rule or (ii) during the course of an assessment authorized by the Abuse of Adults with Disabilities Intervention Act and applicable rule. The request shall be in writing and signed by the Inspector General or his or her designee. The request shall state the purpose for which disclosure is sought. Any person who knowingly and willfully refuses to comply with such a request is guilty of a Class A misdemeanor. A recipient's records and communications shall also be disclosed pursuant to subsection (g-5) of Section 1-17 of the Department of Human Services Act in testimony at health care worker registry hearings or preliminary proceedings when such are relevant to the matter in issue, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

(Source: P.A. 96-406, eff. 8-13-09; 96-1399, eff. 7-29-10;
Section 45. Sections 2 and 3 of the Premises Liability Act are re-enacted as follows:

(740 ILCS 130/2) (from Ch. 80, par. 302)

Sec. 2. The distinction under the common law between invitees and licensees as to the duty owed by an owner or occupier of any premises to such entrants is abolished.

The duty owed to such entrants is that of reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them. The duty of reasonable care under the circumstances which an owner or occupier of land owes to such entrants does not include any of the following: a duty to warn of or otherwise take reasonable steps to protect such entrants from conditions on the premises that are known to the entrant, are open and obvious, or can reasonably be expected to be discovered by the entrant; a duty to warn of latent defects or dangers or defects or dangers unknown to the owner or occupier of the premises; a duty to warn such entrants of any dangers resulting from misuse by the entrants of the premises or anything affixed to or located on the premises; or a duty to protect such entrants from their own misuse of the premises or anything affixed to or located on the premises.

This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.
Sec. 3. Nothing herein affects the law as regards any category of trespasser, including the trespassing child entrant. An owner or occupier of land owes no duty of care to an adult trespasser other than to refrain from willful and wanton conduct that would endanger the safety of a known trespasser on the property from a condition of the property or an activity conducted by the owner or occupier on the property.

This amendatory Act of 1995 applies only to causes of action accruing on or after its effective date.

Section 50. Sections 1 and 2 of the Wrongful Death Act are re-enacted as follows:

Sec. 1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured,
and although the death shall have been caused under such circumstances as amount in law to felony. No action may be brought under this Act if the decedent had brought a cause of action with respect to the same underlying incident or occurrence which was settled or on which judgment was rendered.

This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

(Source: Laws 1853, p. 97; P.A. 89-7.)

(740 ILCS 180/2) (from Ch. 70, par. 2)

Sec. 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person. In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow, and mental suffering, to the surviving spouse and next of kin of such deceased person.

The amount recovered in any such action shall be distributed by the court in which the cause is heard or, in the case of an agreed settlement, by the circuit court, to each of the surviving spouse and next of kin of such deceased person in the proportion, as determined by the court, that the percentage of dependency of each such person upon the deceased person
bears to the sum of the percentages of dependency of all such persons upon the deceased person.

Where the deceased person left no surviving spouse or next of kin entitled to recovery, the damages shall, subject to the following limitations inure, to the exclusive benefit of the following persons, or any one or more of them:

(a) to the person or persons furnishing hospitalization or hospital services in connection with the last illness or injury of the deceased person, not exceeding $450;

(b) to the person or persons furnishing medical or surgical services in connection with such last illness or injury, not exceeding $450;

(c) to the personal representatives, as such, for the costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee. In any such case the measure of damages to be recovered shall be the total of the reasonable value of such hospitalization or hospital service, medical and surgical services, funeral expenses, and such costs and expenses of administration, including attorney fees, not exceeding the foregoing limitations for each class of such expenses and not exceeding $900 plus a reasonable attorney's fee.

Every such action shall be commenced within 2 years after the death of such person but an action against a defendant arising from a crime committed by the defendant in whose name an escrow account was established under the "Criminal Victims'
Escrow Account Act" shall be commenced within 2 years after the establishment of such account. For the purposes of this Section 2, next of kin includes an adopting parent and an adopted child, and they shall be treated as a natural parent and a natural child, respectively. However, if a person entitled to recover benefits under this Act, is, at the time the cause of action accrued, within the age of 18 years, he or she may cause such action to be brought within 2 years after attainment of the age of 18.

In any such action to recover damages, it shall not be a defense that the death was caused in whole or in part by the contributory negligence of one or more of the beneficiaries on behalf of whom the action is brought, but the amount of damages given shall be reduced in the following manner.

The trier of fact shall first determine the decedent's contributory fault in accordance with Sections 2-1116 and 2-1107.1 of the Code of Civil Procedure. Recovery of damages shall be barred or diminished accordingly. The trier of fact shall then determine the contributory fault, if any, of each beneficiary on behalf of whom the action was brought:

(1) Where the trier of fact finds that the contributory fault of a beneficiary on whose behalf the action is brought is not more than 50% of the proximate cause of the wrongful death of the decedent, then the damages allowed to that beneficiary shall be diminished in proportion to the contributory fault attributed to that beneficiary. The
amount of the reduction shall not be payable by any defendant.

(2) Where the trier of fact finds that the contributory fault of a beneficiary on whose behalf the action is brought is more than 50% of the proximate cause of the wrongful death of the decedent, then the beneficiary shall be barred from recovering damages and the amount of damages which would have been payable to that beneficiary, but for the beneficiary's contributory fault, shall not inure to the benefit of the remaining beneficiaries and shall not be payable by any defendant.

The trial judge shall conduct a hearing to determine the degree of dependency of each beneficiary upon the decedent. The trial judge shall calculate the amount of damages to be awarded each beneficiary, taking into account any reduction arising from either the decedent's or the beneficiary's contributory fault.

This amendatory Act of the 91st General Assembly applies to all actions pending on or filed after the effective date of this amendatory Act.

This amendatory Act of the 95th General Assembly applies to causes of actions accruing on or after its effective date.

(Source: P.A. 95-3, eff. 5-31-07.)

(745 ILCS 10/Art. VIA heading rep.)

(745 ILCS 10/6A-101 rep.)
Section 55. Article VIA of the Local Governmental and Governmental Employees Tort Immunity Act is repealed.

Section 60. Section 10b of the Consumer Fraud and Deceptive Business Practices Act is re-enacted as follows:

(815 ILCS 505/10b) (from Ch. 121 1/2, par. 270b)

Sec. 10b. Nothing in this Act shall apply to any of the following:

(1) Actions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.

(2) The provisions of "An act to protect trademark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a trademark, brand or name," approved July 8, 1935, as amended.

(3) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.
(4) The communication of any false, misleading or deceptive information, provided by the seller of real estate located in Illinois, by a real estate salesman or broker licensed under "The Real Estate Brokers License Act", unless the salesman or broker knows of the false, misleading or deceptive character of such information. This provision shall be effective as to any communication, whenever occurring.

(5) (Blank). This item (5)

(6) The communication of any false, misleading, or deceptive information by an insurance producer, registered firm, or limited insurance representative, as those terms are defined in the Illinois Insurance Code, or by an insurance agency or brokerage house concerning the sale, placement, procurement, renewal, binding, cancellation of, or terms of any type of insurance or any policy of insurance unless the insurance producer has actual knowledge of the false, misleading, or deceptive character of the information. This provision shall be effective as to any communications, whenever occurring. This item (6) applies to all causes of action that accrue on or after the effective date of this amendatory Act of 1995.

(Source: P.A. 84-894; 89-152, eff. 1-1-96; revised 1-22-98.)

Section 65. Section 5 of the Workers' Compensation Act is re-enacted as follows:
(820 ILCS 305/5) (from Ch. 48, par. 138.5)

Sec. 5. (a) No common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization retained by the employer, his insurer or his broker to provide safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

However, in any action now pending or hereafter begun to enforce a common law or statutory right to recover damages for negligently causing the injury or death of any employee it is not necessary to allege in the complaint that either the employee or the employer or both were not governed by the provisions of this Act or of any similar Act in force in this or any other State.

Any illegally employed minor or his legal representatives shall, except as hereinafter provided, have the right within 6 months after the time of injury or death, or within 6 months after the appointment of a legal representative, whichever shall be later, to file with the Commission a rejection of his right to the benefits under this Act, in which case such illegally employed minor or his legal representatives shall
have the right to pursue his or their common law or statutory
remedies to recover damages for such injury or death.

No payment of compensation under this Act shall be made to
an illegally employed minor, or his legal representatives,
unless such payment and the waiver of his right to reject the
benefits of this Act has first been approved by the Commission
or any member thereof, and if such payment and the waiver of
his right of rejection has been so approved such payment is a
bar to a subsequent rejection of the provisions of this Act.

(b) Where the injury or death for which compensation is
payable under this Act was caused under circumstances creating
a legal liability for damages on the part of some person other
than his employer to pay damages, then legal proceedings may be
taken against such other person to recover damages
notwithstanding such employer's payment of or liability to pay
compensation under this Act. In such case, however, if the
action against such other person is brought by the injured
employee or his personal representative and judgment is
obtained and paid, or settlement is made with such other
person, either with or without suit, then from the amount
received by such employee or personal representative there
shall be paid to the employer the amount of compensation paid
or to be paid by him to such employee or personal
representative including amounts paid or to be paid pursuant to
paragraph (a) of Section 8 of this Act. If the employee or
personal representative brings an action against another
person and the other person then brings an action for contribution against the employer, the amount, if any, that shall be paid to the employer by the employee or personal representative pursuant to this Section shall be reduced by an amount equal to the amount found by the trier of fact to be the employer's pro rata share of the common liability in the action.

Out of any reimbursement received by the employer pursuant to this Section the employer shall pay his pro rata share of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

If the injured employee or his personal representative agrees to receive compensation from the employer or accept from the employer any payment on account of such compensation, or to institute proceedings to recover the same, the employer may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party.

In such actions brought by the employee or his personal representative, he shall forthwith notify his employer by personal service or registered mail, of such fact and of the
name of the court in which the suit is brought, filing proof thereof in the action. The employer may, at any time thereafter join in the action upon his motion so that all orders of court after hearing and judgment shall be made for his protection. No release or settlement of claim for damages by reason of such injury or death, and no satisfaction of judgment in such proceedings shall be valid without the written consent of both employer and employee or his personal representative, except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by Court order.

In the event the employee or his personal representative fails to institute a proceeding against such third person at any time prior to 3 months before such action would be barred, the employer may in his own name or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such injury or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representatives all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such
This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

(Source: P.A. 79-79; 89-7.)

Section 70. Section 5 of the Workers' Occupational Diseases Act is re-enacted as follows:

(820 ILCS 310/5) (from Ch. 48, par. 172.40)

Sec. 5. (a) There is no common law or statutory right to recover compensation or damages from the employer, his insurer, his broker, any service organization retained by the employer, his insurer or his broker to provide safety service, advice or recommendations for the employer or the agents or employees of any of them for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided or for damages as provided in Section 3 of this Act. This Section shall not affect any right to compensation under the "Workers' Compensation Act".

No compensation is payable under this Act for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under the "Workers' Compensation Act".

(b) Where the disablement or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some
person other than his employer to pay damages, then legal
proceedings may be taken against such other person to recover
damages notwithstanding such employer's payment of or
liability to pay compensation under this Act. In such case,
however, if the action against such other person is brought by
the disabled employee or his personal representative and
judgment is obtained and paid or settlement is made with such
other person, either with or without suit, then from the amount
received by such employee or personal representative there
shall be paid to the employer the amount of compensation paid
or to be paid by him to such employee or personal
representative, including amounts paid or to be paid pursuant
to paragraph (a) of Section 8 of the Workers' Compensation Act
as required under Section 7 of this Act. If the employee or
personal representative brings an action against another
person and the other person then brings an action for
contribution against the employer, the amount, if any, that
shall be paid to the employer by the employee or personal
representative pursuant to this Section shall be reduced by an
amount equal to the amount found by the trier of fact to be the
employer's pro rata share of the common liability in the
action.

Out of any reimbursement received by the employer, pursuant
to this Section the employer shall pay his pro rata share of
all costs and reasonably necessary expenses in connection with
such third party claim, action or suit, and where the services
of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

If the disabled employee or his personal representative agrees to receive compensation from the employer or accept from the employer any payment on account of such compensation, or to institute proceedings to recover the same, the employer may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party.

In such actions brought by the employee or his personal representative, he shall forthwith notify his employer by personal service or registered mail, of such fact and of the name of the court in which the suit is brought, filing proof thereof in the action. The employer may, at any time thereafter join in the action upon his motion so that all orders of court after hearing and judgment shall be made for his protection. No release or settlement of claim for damages by reason of such disability or death, and no satisfaction of judgment in such proceedings, are valid without the written consent of both employer and employee or his personal representative, except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by court order.
In the event the employee or his personal representative fails to institute a proceeding against such third person at any time prior to 3 months before such action would be barred at law the employer may in his own name, or in the name of the employee or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such disability or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representative all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of the Workers' Compensation Act as required by Section 7 of this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such liability.

This amendatory Act of 1995 applies to causes of action accruing on or after its effective date.

(Source: P.A. 81-992; 89-7.)

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