



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3796

Introduced 2/10/2012, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

745 ILCS 10/2-302

from Ch. 85, par. 2-302

Amends the Local Governmental and Governmental Employees Tort Immunity Act. Provides that upon the request of an employee, the local public entity shall provide for the indemnification of any judgment in or settlement of a claim or an action associated with the employee's employment, to the fullest extent permitted by law, and payment of legal defense costs from such claims and actions brought against the employee, in either an individual or official capacity, provided, however: (i) that the action taken by the employee was on behalf of the local public entity; (ii) that the litigation against the employee was not initiated by the local public entity or State or federal government and does not pertain to a criminal defense; or (iii) that the litigation was not initiated by the employee. Provides that the employee shall have the ability to retain legal representation of his or her own choosing and that the local public entity shall hold the employee harmless from the payment of any and all reasonable attorney's fees and costs associated with the defense in the litigation. Makes other changes. Deletes provisions permitting a local governmental entity to elect to do any one or more of the following: (i) appear and defend against the claim or action; (ii) indemnify the employee or former employee for his court costs or reasonable attorney's fees, or both, incurred in the defense of such claim or action; (iii) pay, or indemnify the employee or former employee for a judgment based on such claim or action; or (iv) pay, or indemnify the employee or former employee for, a compromise or settlement of such a claim or action.

LRB097 17585 AJ0 62791 b

1 AN ACT concerning civil law.

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

4 Section 5. The Local Governmental and Governmental
5 Employees Tort Immunity Act is amended by changing Section
6 2-302 as follows:

7 (745 ILCS 10/2-302) (from Ch. 85, par. 2-302)

8 Sec. 2-302. If any claim or action is instituted against an
9 employee of a local public entity based on an injury allegedly
10 arising out of an act or omission occurring within the scope of
11 his employment as such employee upon request of the employee,
12 the local public entity shall provide for the indemnification
13 upon any judgment, compromise, or settlement of such claim or
14 action, to the fullest extent permitted by law, and payment of
15 legal defense costs from any and all claims, causes of action,
16 and suits of every kind and nature that are associated with the
17 employee's employment for actions brought against the
18 employee, in either his or her individual or official capacity,
19 and incurred or suffered as a result of litigation, provided,
20 however: (1) that the action taken by the employee was on
21 behalf of the local public entity; (2) that the litigation or
22 proceeding against the employee was not initiated by the local
23 public entity or State or federal government or agency nor

1 pertains to the defense of any criminal proceeding; or (3) that
2 the litigation or proceeding was not initiated by the employee.
3 The employee shall have the ability to retain legal
4 representation of his or her own choosing when a defense is
5 required, desirable, or has been undertaken and shall further
6 hold the employee harmless from the payment of any and all
7 reasonable attorney's fees and costs associated with said
8 defense arising as a result of any litigation herein
9 contemplated or costs incurred in connection therewith. The
10 reasonable attorney's fee shall be determined by reference to
11 the rate paid by the local public entity to its attorneys or by
12 the court in which the action lies., ~~the entity may elect to do~~
13 ~~any one or more of the following:~~

- 14 ~~(a) appear and defend against the claim or action;~~
15 ~~(b) indemnify the employee or former employee for his~~
16 ~~court costs or reasonable attorney's fees, or both,~~
17 ~~incurred in the defense of such claim or action;~~
18 ~~(c) pay, or indemnify the employee or former employee~~
19 ~~for a judgment based on such claim or action; or~~
20 ~~(d) pay, or indemnify the employee or former employee~~
21 ~~for, a compromise or settlement of such a claim or action.~~

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

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