



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB4119

Introduced 9/3/2021, by Rep. La Shawn K. Ford

#### SYNOPSIS AS INTRODUCED:

5 ILCS 350/2

from Ch. 127, par. 1302

Amends the State Employee Indemnification Act. Allows the Attorney General to decline in writing to appear or defend and to promptly take appropriate action to withdraw as attorney on behalf of a State employee when an act or omission which gave rise to a claim against the employee was not within the scope of the employee's State employment, not including withdrawal for intentional, wilful, or wanton misconduct. Makes conforming changes.

LRB102 18988 RJF 27716 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (ii) Upon entry of a final judgment against the employee,  
24 or upon the settlement of the claim, the employee shall cause  
25 to be served a copy of such judgment or settlement, personally  
26 or by certified or registered mail within thirty days of the

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

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

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

17 (h) This Section shall not apply to claims for bodily  
18 injury or damage to property arising from motor vehicle  
19 accidents.

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

25 (j) The amendatory changes made to this Section by this  
26 amendatory Act of 1986 shall apply to all proceedings filed on



1 or after the effective date of this amendatory Act of 1986 and  
2 to any proceeding pending on its effective date, if the State  
3 employee gives notice to the Attorney General as provided in  
4 this Section within 30 days of the effective date of this  
5 amendatory Act of 1986.

6 (k) This Act applies to all State officials who are  
7 serving as trustees, or their appointing authorities, of a  
8 clean energy community trust or as members of a not-for-profit  
9 foundation or corporation established pursuant to Section  
10 16-111.1 of the Public Utilities Act.

11 (l) The State shall not provide representation for, nor  
12 shall it indemnify, any State employee in (i) any criminal  
13 proceeding in which the employee is a defendant or (ii) any  
14 criminal investigation in which the employee is the target.  
15 Nothing in this Act shall be construed to prohibit the State  
16 from providing representation to a State employee who is a  
17 witness in a criminal matter arising out of that employee's  
18 State employment.

19 (Source: P.A. 99-461, eff. 1-1-17.)