



Sen. John J. Cullerton

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1 AMENDMENT TO SENATE BILL 276

2 AMENDMENT NO. _____. Amend Senate Bill 276 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 1. FINDINGS

5 Section 101. Findings. The General Assembly finds as
6 follows:

7 (1) The increasing cost of medical malpractice insurance
8 results in increased financial burdens on physicians and
9 hospitals.

10 (2) The increasing cost of medical malpractice insurance in
11 Illinois is believed to have contributed to the reduction of
12 the availability of medical care in portions of the State and
13 is believed to have discouraged some medical students from
14 choosing Illinois as the place they will receive their medical
15 education and practice medicine.

16 (3) The public would benefit from making the services of
17 hospitals and physicians more available.

18 (4) In order to preserve the public health, safety, and
19 welfare of the people of Illinois, the current medical
20 malpractice situation requires reforms that enhance the
21 State's oversight of physicians and ability to discipline
22 physicians, that increase the State's oversight of medical
23 liability insurance carriers, that reduce the number of
24 nonmeritorious healing art malpractice actions, that encourage

1 physicians to provide voluntary services at free medical
2 clinics, and that encourage physicians and hospitals to
3 continue providing health care services in Illinois.

4 ARTICLE 2. RISK RETENTION ARRANGEMENTS

5 Section 205. The Open Meetings Act is amended by changing
6 Section 2 as follows:

7 (5 ILCS 120/2) (from Ch. 102, par. 42)

8 Sec. 2. Open meetings.

9 (a) Openness required. All meetings of public bodies shall
10 be open to the public unless excepted in subsection (c) and
11 closed in accordance with Section 2a.

12 (b) Construction of exceptions. The exceptions contained
13 in subsection (c) are in derogation of the requirement that
14 public bodies meet in the open, and therefore, the exceptions
15 are to be strictly construed, extending only to subjects
16 clearly within their scope. The exceptions authorize but do not
17 require the holding of a closed meeting to discuss a subject
18 included within an enumerated exception.

19 (c) Exceptions. A public body may hold closed meetings to
20 consider the following subjects:

21 (1) The appointment, employment, compensation,
22 discipline, performance, or dismissal of specific
23 employees of the public body or legal counsel for the
24 public body, including hearing testimony on a complaint
25 lodged against an employee of the public body or against
26 legal counsel for the public body to determine its
27 validity.

28 (2) Collective negotiating matters between the public
29 body and its employees or their representatives, or
30 deliberations concerning salary schedules for one or more
31 classes of employees.

1 (3) The selection of a person to fill a public office,
2 as defined in this Act, including a vacancy in a public
3 office, when the public body is given power to appoint
4 under law or ordinance, or the discipline, performance or
5 removal of the occupant of a public office, when the public
6 body is given power to remove the occupant under law or
7 ordinance.

8 (4) Evidence or testimony presented in open hearing, or
9 in closed hearing where specifically authorized by law, to
10 a quasi-adjudicative body, as defined in this Act, provided
11 that the body prepares and makes available for public
12 inspection a written decision setting forth its
13 determinative reasoning.

14 (5) The purchase or lease of real property for the use
15 of the public body, including meetings held for the purpose
16 of discussing whether a particular parcel should be
17 acquired.

18 (6) The setting of a price for sale or lease of
19 property owned by the public body.

20 (7) The sale or purchase of securities, investments, or
21 investment contracts.

22 (8) Security procedures and the use of personnel and
23 equipment to respond to an actual, a threatened, or a
24 reasonably potential danger to the safety of employees,
25 students, staff, the public, or public property.

26 (9) Student disciplinary cases.

27 (10) The placement of individual students in special
28 education programs and other matters relating to
29 individual students.

30 (11) Litigation, when an action against, affecting or
31 on behalf of the particular public body has been filed and
32 is pending before a court or administrative tribunal, or
33 when the public body finds that an action is probable or
34 imminent, in which case the basis for the finding shall be

1 recorded and entered into the minutes of the closed
2 meeting.

3 (12) The establishment of reserves or settlement of
4 claims as provided in the Local Governmental and
5 Governmental Employees Tort Immunity Act, if otherwise the
6 disposition of a claim or potential claim might be
7 prejudiced, or the review or discussion of claims, loss or
8 risk management information, records, data, advice or
9 communications from or with respect to any insurer of the
10 public body or any intergovernmental risk management
11 association or self insurance pool of which the public body
12 is a member.

13 (13) Conciliation of complaints of discrimination in
14 the sale or rental of housing, when closed meetings are
15 authorized by the law or ordinance prescribing fair housing
16 practices and creating a commission or administrative
17 agency for their enforcement.

18 (14) Informant sources, the hiring or assignment of
19 undercover personnel or equipment, or ongoing, prior or
20 future criminal investigations, when discussed by a public
21 body with criminal investigatory responsibilities.

22 (15) Professional ethics or performance when
23 considered by an advisory body appointed to advise a
24 licensing or regulatory agency on matters germane to the
25 advisory body's field of competence.

26 (16) Self evaluation, practices and procedures or
27 professional ethics, when meeting with a representative of
28 a statewide association of which the public body is a
29 member.

30 (17) The recruitment, credentialing, discipline or
31 formal peer review of physicians or other health care
32 professionals for a hospital, or other institution
33 providing medical care, that is operated by the public
34 body.

1 (18) Deliberations for decisions of the Prisoner
2 Review Board.

3 (19) Review or discussion of applications received
4 under the Experimental Organ Transplantation Procedures
5 Act.

6 (20) The classification and discussion of matters
7 classified as confidential or continued confidential by
8 the State Employees Suggestion Award Board.

9 (21) Discussion of minutes of meetings lawfully closed
10 under this Act, whether for purposes of approval by the
11 body of the minutes or semi-annual review of the minutes as
12 mandated by Section 2.06.

13 (22) Deliberations for decisions of the State
14 Emergency Medical Services Disciplinary Review Board.

15 (23) The operation by a municipality of a municipal
16 utility or the operation of a municipal power agency or
17 municipal natural gas agency when the discussion involves
18 (i) contracts relating to the purchase, sale, or delivery
19 of electricity or natural gas or (ii) the results or
20 conclusions of load forecast studies.

21 (24) Meetings of a residential health care facility
22 resident sexual assault and death review team or the
23 Residential Health Care Facility Resident Sexual Assault
24 and Death Review Teams Executive Council under the
25 Residential Health Care Facility Resident Sexual Assault
26 and Death Review Team Act.

27 (25) The establishment of reserves administration,
28 adjudication, or settlement of claims as provided in
29 Article XLV of the Illinois Insurance Code if otherwise the
30 disposition of a claim or potential claim might be
31 prejudiced, or the review or discussion of claims, loss or
32 risk management information, records, data, advice or
33 communications from or with respect to any self-insurance
34 trust administration or adjudication of any claim, or

1 insurer created by the public body.

2 (d) Definitions. For purposes of this Section:

3 "Employee" means a person employed by a public body whose
4 relationship with the public body constitutes an
5 employer-employee relationship under the usual common law
6 rules, and who is not an independent contractor.

7 "Public office" means a position created by or under the
8 Constitution or laws of this State, the occupant of which is
9 charged with the exercise of some portion of the sovereign
10 power of this State. The term "public office" shall include
11 members of the public body, but it shall not include
12 organizational positions filled by members thereof, whether
13 established by law or by a public body itself, that exist to
14 assist the body in the conduct of its business.

15 "Quasi-adjudicative body" means an administrative body
16 charged by law or ordinance with the responsibility to conduct
17 hearings, receive evidence or testimony and make
18 determinations based thereon, but does not include local
19 electoral boards when such bodies are considering petition
20 challenges.

21 (e) Final action. No final action may be taken at a closed
22 meeting. Final action shall be preceded by a public recital of
23 the nature of the matter being considered and other information
24 that will inform the public of the business being conducted.

25 (Source: P.A. 93-57, eff. 7-1-03; 93-79, eff. 7-2-03; 93-422,
26 eff. 8-5-03; 93-577, eff. 8-21-03; revised 9-8-03.)

27 Section 210. The Counties Code is amended by changing
28 Section 5-1005 and by adding Division 6-34 as follows:

29 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

30 Sec. 5-1005. Powers. Each county shall have power:

31 1. To purchase and hold the real and personal estate
32 necessary for the uses of the county, and to purchase and hold,

1 for the benefit of the county, real estate sold by virtue of
2 judicial proceedings in which the county is plaintiff.

3 2. To sell and convey or lease any real or personal estate
4 owned by the county.

5 3. To make all contracts and do all other acts in relation
6 to the property and concerns of the county necessary to the
7 exercise of its corporate powers.

8 4. To take all necessary measures and institute proceedings
9 to enforce all laws for the prevention of cruelty to animals.

10 5. To purchase and hold or lease real estate upon which may
11 be erected and maintained buildings to be utilized for purposes
12 of agricultural experiments and to purchase, hold and use
13 personal property for the care and maintenance of such real
14 estate in connection with such experimental purposes.

15 6. To cause to be erected, or otherwise provided, suitable
16 buildings for, and maintain a county hospital and necessary
17 branch hospitals and/or a county sheltered care home or county
18 nursing home for the care of such sick, chronically ill or
19 infirm persons as may by law be proper charges upon the county,
20 or upon other governmental units, and to provide for the
21 management of the same. The county board may establish rates to
22 be paid by persons seeking care and treatment in such hospital
23 or home in accordance with their financial ability to meet such
24 charges, either personally or through a hospital plan or
25 hospital insurance, and the rates to be paid by governmental
26 units, including the State, for the care of sick, chronically
27 ill or infirm persons admitted therein upon the request of such
28 governmental units. Any hospital maintained by a county under
29 this Section is authorized to provide any service and enter
30 into any contract or other arrangement not prohibited for a
31 hospital that is licensed under the Hospital Licensing Act,
32 incorporated under the General Not-For-Profit Corporation Act,
33 and exempt from taxation under paragraph (3) of subsection (c)
34 of Section 501 of the Internal Revenue Code.

1 7. To contribute such sums of money toward erecting,
2 building, maintaining, and supporting any non-sectarian public
3 hospital located within its limits as the county board of the
4 county shall deem proper.

5 8. To purchase and hold real estate for the preservation of
6 forests, prairies and other natural areas and to maintain and
7 regulate the use thereof.

8 9. To purchase and hold real estate for the purpose of
9 preserving historical spots in the county, to restore, maintain
10 and regulate the use thereof and to donate any historical spot
11 to the State.

12 10. To appropriate funds from the county treasury to be
13 used in any manner to be determined by the board for the
14 suppression, eradication and control of tuberculosis among
15 domestic cattle in such county.

16 11. To take all necessary measures to prevent forest fires
17 and encourage the maintenance and planting of trees and the
18 preservation of forests.

19 12. To authorize the closing on Saturday mornings of all
20 offices of all county officers at the county seat of each
21 county, and to otherwise regulate and fix the days and the
22 hours of opening and closing of such offices, except when the
23 days and the hours of opening and closing of the office of any
24 county officer are otherwise fixed by law; but the power herein
25 conferred shall not apply to the office of State's Attorney and
26 the offices of judges and clerks of courts and, in counties of
27 500,000 or more population, the offices of county clerk.

28 13. To provide for the conservation, preservation and
29 propagation of insectivorous birds through the expenditure of
30 funds provided for such purpose.

31 14. To appropriate funds from the county treasury and
32 expend the same for care and treatment of tuberculosis
33 residents.

34 15. In counties having less than 1,000,000 inhabitants, to

1 take all necessary or proper steps for the extermination of
2 mosquitoes, flies or other insects within the county.

3 16. To install an adequate system of accounts and financial
4 records in the offices and divisions of the county, suitable to
5 the needs of the office and in accordance with generally
6 accepted principles of accounting for governmental bodies,
7 which system may include such reports as the county board may
8 determine.

9 17. To purchase and hold real estate for the construction
10 and maintenance of motor vehicle parking facilities for persons
11 using county buildings, but the purchase and use of such real
12 estate shall not be for revenue producing purposes.

13 18. To acquire and hold title to real property located
14 within the county, or partly within and partly outside the
15 county by dedication, purchase, gift, legacy or lease, for park
16 and recreational purposes and to charge reasonable fees for the
17 use of or admission to any such park or recreational area and
18 to provide police protection for such park or recreational
19 area. Personnel employed to provide such police protection
20 shall be conservators of the peace within such park or
21 recreational area and shall have power to make arrests on view
22 of the offense or upon warrants for violation of any of the
23 ordinances governing such park or recreational area or for any
24 breach of the peace in the same manner as the police in
25 municipalities organized and existing under the general laws of
26 the State. All such real property outside the county shall be
27 contiguous to the county and within the boundaries of the State
28 of Illinois.

29 19. To appropriate funds from the county treasury to be
30 used to provide supportive social services designed to prevent
31 the unnecessary institutionalization of elderly residents, or,
32 for operation of, and equipment for, senior citizen centers
33 providing social services to elderly residents.

34 20. To appropriate funds from the county treasury and loan

1 such funds to a county water commission created under the
2 "Water Commission Act", approved June 30, 1984, as now or
3 hereafter amended, in such amounts and upon such terms as the
4 county may determine or the county and the commission may
5 agree. The county shall not under any circumstances be
6 obligated to make such loans. The county shall not be required
7 to charge interest on any such loans.

8 21. To establish an independent entity to administer a
9 medical care risk retention trust program, to contribute such
10 sums of money to the risk retention trust program as the county
11 board of the county shall deem proper to operate the medical
12 care risk retention trust program, to establish uniform
13 eligibility requirements for participation in the risk
14 retention trust program, to appoint an administrator of the
15 risk retention trust program, to charge premiums, to establish
16 a billing procedure to collect premiums, and to ensure timely
17 administration and adjudication of claims under the program. A
18 single medical care risk retention trust program may be
19 established jointly by more than one county, in accordance with
20 an agreement between the participating counties, if at least
21 one of the participating counties has a population of 200,000
22 or more according to the most recent federal decennial census.

23 All contracts for the purchase of coal under this Section
24 shall be subject to the provisions of "An Act concerning the
25 use of Illinois mined coal in certain plants and institutions",
26 filed July 13, 1937, as amended.

27 (Source: P.A. 86-962; 86-1028.)

28 (55 ILCS 5/Div. 6-34 heading new)

29 Division 6-34. Funding for health care financing programs

30 (55 ILCS 5/6-34001 new)

31 Sec. 6-34001. Authorization. The county board of any county
32 with a population of 200,000 or more according to the most

1 recent federal decennial census (and a county with a population
2 of less than 200,000 according to the most recent federal
3 decennial census if that county is participating in a single
4 trust program with one or more other counties in accordance
5 with the requirements of paragraph (21) of Section 5-1005 of
6 this Code) may, upon finding such action necessary for
7 protection of the public health, safety, and welfare, incur an
8 indebtedness by the establishment of lines or letters of credit
9 or issue general obligation or revenue bonds for the purpose of
10 ensuring the availability of and improving hospital, medical,
11 and health services as authorized under paragraph (21) of
12 Section 5-1005 of this Code.

13 (55 ILCS 5/6-34002 new)

14 Sec. 6-34002. Bonds. The bonds authorized in Section
15 6-34001 shall be issued in such denominations, be for such term
16 or terms, and bear interest at such rate as may be specified in
17 the resolution of the county board authorizing the issuance of
18 those bonds.

19 Section 215. The Illinois Insurance Code is amended by
20 adding Article XLV as follows:

21 (215 ILCS 5/Art. XLV heading new)

22 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
23 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

24 (215 ILCS 5/1501 new)

25 Sec. 1501. Scope of Article. This Article applies only to
26 trusts sponsored by counties and organized under this Article
27 to provide medical malpractice insurance authorized under
28 paragraph (21) of Section 5-1005 of the Counties Code for
29 physicians and health care professionals providing medical
30 care and health care within the county's limits. In the case of

1 a single trust sponsored and organized by more than one county
2 in accordance with the requirements of paragraph (21) of
3 Section 5-1005 of the Counties Code, the powers and duties of a
4 county under this Article shall be exercised jointly by the
5 counties participating in the trust program in accordance with
6 the agreement between the counties.

7 (215 ILCS 5/1502 new)

8 Sec. 1502. Definitions. As used in this Article:

9 "Risk retention trust" or "trust" means a risk retention
10 trust created under this Article.

11 "Trust sponsor" means a county that has created a risk
12 retention trust.

13 "Pool retention fund" means a separate fund maintained for
14 payment of first dollar claims, up to a specified amount per
15 claim ("specific retention") and up to an aggregate amount for
16 a 12-month period ("aggregate retention").

17 "Contingency reserve fund" means a separate fund
18 maintained for payment of claims in excess of the pool
19 retention fund amount.

20 "Coverage grant" means the document describing specific
21 coverages and terms of coverage that are provided by a risk
22 retention trust created under this Article.

23 "Licensed service company" means an entity licensed by the
24 Department to perform claims adjusting, loss control, and data
25 processing.

26 (215 ILCS 5/1503 new)

27 Sec. 1503. Name. The corporate name of any risk retention
28 trust shall not be the same as or deceptively similar to the
29 name of any domestic insurance company or of any foreign or
30 alien insurance company authorized to transact business in this
31 State.

1 (215 ILCS 5/1504 new)

2 Sec. 1504. Principal office place of business. The
3 principal office of any risk retention trust shall be located
4 in this State.

5 (215 ILCS 5/1505 new)

6 Sec. 1505. Creation.

7 (1) Any county with a population of 200,000 or more
8 according to the most recent federal decennial census may
9 create a risk retention trust for the pooling of risks to
10 provide professional liability coverage authorized under
11 paragraph (21) of Section 5-1005 of the Counties Code for its
12 physicians and health care professionals providing medical
13 care and related health care within the county's limits. A
14 single risk retention trust may also be created jointly by more
15 than one county in accordance with the requirements of
16 paragraph (21) of Section 5-1005 of the Counties Code. A trust
17 shall be administered by at least 3 trustees who may be
18 individuals or corporate trustees and are appointed by the
19 trust sponsor and who represent physicians who have agreed in
20 writing to participate in the trust.

21 (2) The trustees shall appoint a qualified licensed
22 administrator who shall administer the affairs of the risk
23 retention trust.

24 (3) The trustees shall retain a licensed service company to
25 perform claims adjusting, loss control, and data processing and
26 any other delegated administrative duties.

27 (4) The trust sponsor, the trustees, and the trust
28 administrator shall be fiduciaries of the trust.

29 (5) A trust shall be consummated by a written trust
30 agreement and shall be subject to the laws of this State
31 governing the creation and operation of trusts, to the extent
32 not inconsistent with this Article.

1 (215 ILCS 5/1506 new)

2 Sec. 1506. Participation.

3 (1) A physician or health care professional providing
4 medical care and related health care within the county's limits
5 may participate in a risk retention trust if the physician or
6 health care professional:

7 (a) meets the underwriting standards for acceptance
8 into the trust;

9 (b) files a written application for coverage, agreeing
10 to meet all of the membership conditions of the trust;

11 (c) provides medical care and related health care in
12 the county sponsoring the trust;

13 (d) agrees to meet the ongoing loss control provisions
14 and risk pooling arrangements set forth by the trust;

15 (e) pays premium contributions on a timely basis as
16 required; and

17 (f) pays predetermined annual required contributions
18 into the contingency reserve fund.

19 (2) A physician or health care professional accepted for
20 trust membership and participating in the trust is liable for
21 payment to the trust of the amount of his or her annual premium
22 contribution and his or her annual predetermined contingency
23 reserve fund contribution.

24 (215 ILCS 5/1507 new)

25 Sec. 1507. Coverage grants; payment of claims.

26 (1) A risk retention trust may not issue coverage grants
27 until it has established a contingency reserve fund in an
28 amount deemed appropriate by the trust and filed with the
29 Department of Financial and Professional Regulation. A risk
30 retention trust must have and at all times maintain a pool
31 retention fund or a line or letter of credit at least equal to
32 its unpaid liabilities as determined by an independent actuary.

33 (2) Every coverage grant issued or delivered in this State

1 by a risk retention trust shall provide for the extent of the
2 liability of trust members to the extent that funds are needed
3 to pay a member's share of the depleted contingency reserve
4 fund needed to maintain the reserves required by this Section.

5 (3) All claims shall be paid first from the pool retention
6 fund. If that fund becomes depleted, any additional claims
7 shall be paid from the contingency reserve fund.

8 (215 ILCS 5/1508 new)

9 Sec. 1508. Applicable Illinois Insurance Code provisions.
10 Other than this Article, only Sections 155.19, 155.20, and
11 155.25 and subsections (a) through (c) of Section 155.18 of
12 this Code shall apply to county risk retention trusts. The
13 Secretary shall advise the county board of any determinations
14 made pursuant to subsection (b) of Section 155.18 of this Code.

15 (215 ILCS 5/1509 new)

16 Sec. 1509. Authorized investments. In addition to other
17 investments authorized by law, a risk retention trust with
18 assets of at least \$5,000,000 may invest in any combination of
19 the following:

20 (1) the common stocks listed on a recognized exchange
21 or market;

22 (2) stock and convertible debt investments, or
23 investment grade corporate bonds, in or issued by any
24 corporation, the book value of which may not exceed 5% of
25 the total intergovernmental risk management entity's
26 investment account at book value in which those securities
27 are held, determined as of the date of the investment,
28 provided that investments in the stock of any one
29 corporation may not exceed 5% of the total outstanding
30 stock of the corporation and that the investments in the
31 convertible debt of any one corporation may not exceed 5%
32 of the total amount of such debt that may be outstanding;

1 (3) the straight preferred stocks or convertible
2 preferred stocks and convertible debt securities issued or
3 guaranteed by a corporation whose common stock is listed on
4 a recognized exchange or market;

5 (4) mutual funds or commingled funds that meet the
6 following requirements:

7 (A) the mutual fund or commingled fund is managed
8 by an investment company as defined in and registered
9 under the federal Investment Company Act of 1940 and
10 registered under the Illinois Securities Law of 1953 or
11 an investment adviser as defined under the federal
12 Investment Advisers Act of 1940;

13 (B) the mutual fund has been in operation for at
14 least 5 years; and

15 (C) the mutual fund has total net assets of
16 \$150,000,000 or more;

17 (5) commercial grade real estate located in the State
18 of Illinois.

19 Any investment adviser retained by a trust must be a
20 fiduciary who has the power to manage, acquire, or dispose of
21 any asset of the trust and has acknowledged in writing that he
22 or she is a fiduciary with respect to the trust and that he or
23 she will adhere to all of the guidelines of the trust and is
24 one or more of the following:

25 (i) registered as an investment adviser under the
26 federal Investment Advisers Act of 1940;

27 (ii) registered as an investment adviser under the
28 Illinois Securities Law of 1953;

29 (iii) a bank as defined in the federal Investment
30 Advisers Act of 1940;

31 (iv) an insurance company authorized to transact
32 business in this State.

33 Nothing in this Section shall be construed to authorize a
34 risk retention trust to accept the deposit of public funds

1 except for trust risk retention purposes.

2 ARTICLE 3. AMENDATORY PROVISIONS

3 Section 310. The Illinois Insurance Code is amended by
4 changing Sections 155.18, 155.19, 402, and 1204 and by adding
5 Section 155.18a as follows:

6 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

7 Sec. 155.18. (a) This Section shall apply to insurance on
8 risks based upon negligence by a physician, hospital or other
9 health care provider, referred to herein as medical liability
10 insurance. This Section shall not apply to contracts of
11 reinsurance, nor to any farm, county, district or township
12 mutual insurance company transacting business under an Act
13 entitled "An Act relating to local mutual district, county and
14 township insurance companies", approved March 13, 1936, as now
15 or hereafter amended, nor to any such company operating under a
16 special charter.

17 (b) The following standards shall apply to the making and
18 use of rates pertaining to all classes of medical liability
19 insurance:

20 (1) Rates shall not be excessive or inadequate, as
21 herein defined, nor shall they be unfairly discriminatory.
22 No rate shall be held to be excessive unless such rate is
23 unreasonably high for the insurance provided, ~~and a~~
24 ~~reasonable degree of competition does not exist in the area~~
25 ~~with respect to the classification to which such rate is~~
26 ~~applicable.~~

27 No rate shall be held inadequate unless it is
28 unreasonably low for the insurance provided ~~and continued~~
29 ~~use of it would endanger solvency of the company.~~

30 (2) Consideration shall be given, to the extent
31 applicable, to past and prospective loss experience within

1 and outside this State, to a reasonable margin for
2 underwriting profit and contingencies, to past and
3 prospective expenses both countrywide and those especially
4 applicable to this State, and to all other factors,
5 including judgment factors, deemed relevant within and
6 outside this State.

7 Consideration may also be given in the making and use
8 of rates to dividends, savings or unabsorbed premium
9 deposits allowed or returned by companies to their
10 policyholders, members or subscribers.

11 (3) The systems of expense provisions included in the
12 rates for use by any company or group of companies may
13 differ from those of other companies or groups of companies
14 to reflect the operating methods of any such company or
15 group with respect to any kind of insurance, or with
16 respect to any subdivision or combination thereof.

17 (4) Risks may be grouped by classifications for the
18 establishment of rates and minimum premiums.
19 Classification rates may be modified to produce rates for
20 individual risks in accordance with rating plans which
21 establish standards for measuring variations in hazards or
22 expense provisions, or both. Such standards may measure any
23 difference among risks that have a probable effect upon
24 losses or expenses. Such classifications or modifications
25 of classifications of risks may be established based upon
26 size, expense, management, individual experience, location
27 or dispersion of hazard, or any other reasonable
28 considerations and shall apply to all risks under the same
29 or substantially the same circumstances or conditions. The
30 rate for an established classification should be related
31 generally to the anticipated loss and expense factors of
32 the class.

33 (c) Every company writing medical liability insurance
34 shall file with the Secretary of Financial and Professional

1 Regulation ~~Director of Insurance~~ the rates and rating schedules
2 it uses for medical liability insurance.

3 (1) This filing shall occur upon a company's
4 commencement of medical liability insurance business in
5 this State ~~at least annually~~ and thereafter as often as the
6 rates are changed or amended.

7 (2) For the purposes of this Section, any change in
8 premium to the company's insureds as a result of a change
9 in the company's base rates or a change in its increased
10 limits factors shall constitute a change in rates and shall
11 require a filing with the Secretary ~~Director~~. On any filing
12 made pursuant to this Section wherein the company's annual
13 cumulative overall rate increase exceeds 10%, the
14 Secretary shall convene a public hearing for the purpose of
15 receiving testimony from the company and from any
16 interested persons regarding the company's proposed
17 increase.

18 (3) It shall be certified in such filing by an officer
19 of the company and a qualified actuary that the company's
20 rates are based on sound actuarial principles and are not
21 inconsistent with the company's experience. The Secretary
22 may request any additional statistical data and other
23 pertinent information necessary to determine the manner
24 the company used to set the filed rates and the
25 reasonableness of those rates.

26 (d) If, after an administrative ~~a~~ hearing pursuant to
27 subsection (c) of Section 401 of this Code, the Secretary
28 ~~Director~~ finds:

29 (1) that any rate, rating plan or rating system
30 violates the provisions of this Section applicable to it,
31 he shall ~~may~~ issue an order to the company which has been
32 the subject of the hearing specifying in what respects such
33 violation exists and may prohibit ~~stating when, within a~~
34 ~~reasonable period of time,~~ the further use of such rate or

1 rating system by such company in contracts of insurance
2 ~~made thereafter shall be prohibited;~~

3 (2) that the violation of any of the provisions of this
4 Section ~~applicable to it~~ by any company which has been the
5 subject of the hearing was wilful or that any company has
6 repeatedly violated any provision of this Section, he may
7 take either or both of the following actions:

8 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
9 the certificate of authority of such company with
10 respect to the class of insurance which has been the
11 subject of the hearing.

12 (B) Impose a penalty of up to \$1,000 against the
13 company for each violation. Each day during which a
14 violation occurs constitutes a separate violation.

15 (e) Every company writing medical liability insurance in
16 this State shall offer to each of its medical liability
17 insureds the option to make premium payments in at least
18 quarterly installments as prescribed by and filed with the
19 Secretary. This offer shall be included in the initial offer or
20 in the first policy renewal occurring after the effective date
21 of this amendatory Act of the 94th General Assembly, but no
22 earlier than January 1, 2006.

23 (f) Every company writing medical liability insurance is
24 encouraged, but not required, to offer the opportunity for
25 participation in a plan offering deductibles to its medical
26 liability insureds. Any plan to offer deductibles shall be
27 filed with the Department of Financial and Professional
28 Regulation.

29 (g) Medical liability insurers are encouraged, but not
30 required, to offer the opportunity for participation in a plan
31 providing premium discounts for participation in risk
32 management activities to its medical liability insureds. Any
33 such plan shall be filed with the Department.

34 (Source: P.A. 79-1434.)

1 (215 ILCS 5/155.18a new)

2 Sec. 155.18a. Professional Liability Insurance Resource
3 Center. The Secretary of Financial and Professional Regulation
4 shall establish a Professional Liability Insurance Resource
5 Center on the World Wide Web containing the names and telephone
6 numbers of all licensed companies providing medical liability
7 insurance and producers who sell medical liability insurance.
8 Each company and producer shall submit the information to the
9 Department on or before September 30 of each year in order to
10 be listed on the website. The Department is under no obligation
11 to list a company or producer on the website. Hyperlinks to
12 company websites shall be included, if available. The
13 publication of the information on the Department's website
14 shall commence on January 1, 2006. The Department shall update
15 the information on the Professional Liability Insurance
16 Resource Center at least annually.

17 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

18 Sec. 155.19. All claims filed after December 31, 1976 with
19 any insurer and all suits filed after December 31, 1976 in any
20 court in this State, alleging liability on the part of any
21 physician, hospital or other health care provider for medically
22 related injuries, shall be reported to the Secretary of
23 Financial and Professional Regulation ~~Director of Insurance~~ in
24 such form and under such terms and conditions as may be
25 prescribed by the Secretary ~~Director~~. Notwithstanding any
26 other provision of law to the contrary, any insurer, stop loss
27 insurer, captive insurer, risk retention group, county risk
28 retention trust, religious or charitable risk pooling trust,
29 surplus line insurer, or other entity authorized or permitted
30 by law to provide medical liability insurance in this State
31 shall report to the Secretary, in such form and under such
32 terms and conditions as may be prescribed by the Secretary, all

1 claims filed after December 31, 2005 and all suits filed after
2 December 31, 2005 in any court in this State alleging liability
3 on the part of any physician, hospital, or health care provider
4 for medically-related injuries. Each clerk of the circuit court
5 shall provide to the Secretary specially colored sheets
6 containing such information as the Secretary may deem necessary
7 to verify the accuracy and completeness of reports made to the
8 Secretary under this Section. The Secretary ~~Director~~ shall
9 maintain complete and accurate records of all such claims and
10 suits including their nature, amount, disposition (categorized
11 by verdict, settlement, dismissal, or otherwise and including
12 disposition of any post-trial motions and types of damages
13 awarded, if any, including but not limited to economic damages
14 and non-economic damages) and other information as he may deem
15 useful or desirable in observing and reporting on health care
16 provider liability trends in this State. The Secretary ~~Director~~
17 shall release to appropriate disciplinary and licensing
18 agencies any such data or information which may assist such
19 agencies in improving the quality of health care or which may
20 be useful to such agencies for the purpose of professional
21 discipline.

22 With due regard for appropriate maintenance of the
23 confidentiality thereof, the Secretary ~~Director~~ shall ~~may~~
24 release, on an annual basis, from time to time to the Governor,
25 the General Assembly and the general public statistical reports
26 based on such data and information.

27 If the Secretary finds that any entity required to report
28 information in its possession under this Section has violated
29 any provision of this Section by filing late, incomplete, or
30 inaccurate reports, the Secretary may fine the entity up to
31 \$1,000 for each offense. Each day during which a violation
32 occurs constitutes a separate offense.

33 The Secretary ~~Director~~ may promulgate such rules and
34 regulations as may be necessary to carry out the provisions of

1 this Section.

2 (Source: P.A. 79-1434.)

3 (215 ILCS 5/402) (from Ch. 73, par. 1014)

4 Sec. 402. Examinations, investigations and hearings. (1)

5 All examinations, investigations and hearings provided for by
6 this Code may be conducted either by the Secretary ~~Director~~
7 personally, or by one or more of the actuaries, technical
8 advisors, deputies, supervisors or examiners employed or
9 retained by the Department and designated by the Secretary
10 ~~Director~~ for such purpose. When necessary to supplement its
11 examination procedures, the Department may retain independent
12 actuaries deemed competent by the Secretary ~~Director~~,
13 independent certified public accountants, or qualified
14 examiners of insurance companies deemed competent by the
15 Secretary ~~Director~~, or any combination of the foregoing, the
16 cost of which shall be borne by the company or person being
17 examined. The Secretary ~~Director~~ may compensate independent
18 actuaries, certified public accountants and qualified
19 examiners retained for supplementing examination procedures in
20 amounts not to exceed the reasonable and customary charges for
21 such services. The Secretary ~~Director~~ may also accept as a part
22 of the Department's examination of any company or person (a) a
23 report by an independent actuary deemed competent by the
24 Secretary ~~Director~~ or (b) a report of an audit made by an
25 independent certified public accountant. Neither those persons
26 so designated nor any members of their immediate families shall
27 be officers of, connected with, or financially interested in
28 any company other than as policyholders, nor shall they be
29 financially interested in any other corporation or person
30 affected by the examination, investigation or hearing.

31 (2) All hearings provided for in this Code shall, unless
32 otherwise specially provided, be held at such time and place as
33 shall be designated in a notice which shall be given by the

1 Secretary ~~Director~~ in writing to the person or company whose
2 interests are affected, at least 10 days before the date
3 designated therein. The notice shall state the subject of
4 inquiry and the specific charges, if any. The hearings shall be
5 held in the City of Springfield, the City of Chicago, or in the
6 county where the principal business address of the person or
7 company affected is located. For a rate increase filing in
8 medical liability insurance under subsection (c) of Section
9 155.18 of this Code, the Secretary may hold a hearing with the
10 company and policyholders present for the purpose of receiving
11 testimony from the company and policyholders regarding the rate
12 increase. The hearing must occur under written and express
13 terms and conditions that are sufficient to protect from
14 disclosure information that the subject medical liability
15 insurance company deems proprietary, confidential, or a trade
16 secret. The insurance company must give notice of the hearing
17 time, date, and location to medical liability insurance
18 policyholders whose rates have increased. Notice to
19 policyholders may be given through regular publications issued
20 to policyholders or by electronic means. Other than the cost of
21 this notice, the Department shall be responsible for the costs
22 of this hearing.

23 (Source: P.A. 87-757.)

24 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

25 Sec. 1204. (A) The Secretary ~~Director~~ shall promulgate
26 rules and regulations which shall require each insurer licensed
27 to write property or casualty insurance in the State and each
28 syndicate doing business on the Illinois Insurance Exchange to
29 record and report its loss and expense experience and other
30 data as may be necessary to assess the relationship of
31 insurance premiums and related income as compared to insurance
32 costs and expenses. The Secretary ~~Director~~ may designate one or
33 more rate service organizations or advisory organizations to

1 gather and compile such experience and data. The Secretary
2 ~~Director~~ shall require each insurer licensed to write property
3 or casualty insurance in this State and each syndicate doing
4 business on the Illinois Insurance Exchange to submit a report,
5 on a form furnished by the Secretary ~~Director~~, showing its
6 direct writings in this State and companywide.

7 (B) Such report required by subsection (A) of this Section
8 may include, but not be limited to, the following specific
9 types of insurance written by such insurer:

10 (1) Political subdivision liability insurance reported
11 separately in the following categories:

12 (a) municipalities;

13 (b) school districts;

14 (c) other political subdivisions;

15 (2) Public official liability insurance;

16 (3) Dram shop liability insurance;

17 (4) Day care center liability insurance;

18 (5) Labor, fraternal or religious organizations
19 liability insurance;

20 (6) Errors and omissions liability insurance;

21 (7) Officers and directors liability insurance
22 reported separately as follows:

23 (a) non-profit entities;

24 (b) for-profit entities;

25 (8) Products liability insurance;

26 (9) Medical malpractice insurance;

27 (10) Attorney malpractice insurance;

28 (11) Architects and engineers malpractice insurance;

29 and

30 (12) Motor vehicle insurance reported separately for
31 commercial and private passenger vehicles as follows:

32 (a) motor vehicle physical damage insurance;

33 (b) motor vehicle liability insurance.

34 (C) Such report may include, but need not be limited to the

1 following data, both specific to this State and companywide, in
2 the aggregate or by type of insurance for the previous year on
3 a calendar year basis:

4 (1) Direct premiums written;

5 (2) Direct premiums earned;

6 (3) Number of policies;

7 (4) Net investment income, using appropriate estimates
8 where necessary;

9 (5) Losses paid;

10 (6) Losses incurred;

11 (7) Loss reserves:

12 (a) Losses unpaid on reported claims;

13 (b) Losses unpaid on incurred but not reported
14 claims;

15 (8) Number of claims:

16 (a) Paid claims;

17 (b) Arising claims;

18 (9) Loss adjustment expenses:

19 (a) Allocated loss adjustment expenses;

20 (b) Unallocated loss adjustment expenses;

21 (10) Net underwriting gain or loss;

22 (11) Net operation gain or loss, including net
23 investment income;

24 (12) Any other information requested by the Secretary
25 Director.

26 (C-5) Additional information required from medical
27 malpractice insurers.

28 (1) In addition to the other requirements of this
29 Section, all medical malpractice insurers shall include
30 the following information in the report required by
31 subsection (A) of this Section in such form and under such
32 terms and conditions as may be prescribed by the Secretary:

33 (a) paid and incurred losses by county for each of
34 the past 10 policy years; and

1 (b) earned exposures by ISO code, policy type, and
2 policy year by county for each of the past 10 years.

3 (2) All information collected by the Secretary under
4 paragraph (1) of this subsection (C-5) shall be made
5 available, on a company-by-company basis, to the General
6 Assembly and the general public. This provision shall
7 supersede any other provision of State law that may
8 otherwise protect such information from public disclosure
9 as confidential.

10 (C-10) Additional information required from medical
11 malpractice insurers. All medical malpractice insurers shall
12 annually provide the Department with a copy of the following:

13 (1) the company's reserve and surplus studies; and

14 (2) consulting actuarial report and data supporting
15 the company's rate filing.

16 The information provided under this subsection (C-10)
17 shall be made available to the General Assembly and the public.

18 (D) In addition to the information which may be requested
19 under subsection (C), the Secretary ~~Director~~ may also request
20 on a companywide, aggregate basis, Federal Income Tax
21 recoverable, net realized capital gain or loss, net unrealized
22 capital gain or loss, and all other expenses not requested in
23 subsection (C) above.

24 (E) Violations - Suspensions - Revocations.

25 (1) Any company or person subject to this Article, who
26 willfully or repeatedly fails to observe or who otherwise
27 violates any of the provisions of this Article or any rule
28 or regulation promulgated by the Secretary ~~Director~~ under
29 authority of this Article or any final order of the
30 Secretary ~~Director~~ entered under the authority of this
31 Article shall by civil penalty forfeit to the State of
32 Illinois a sum not to exceed \$2,000. Each day during which
33 a violation occurs constitutes a separate offense.

34 (2) No forfeiture liability under paragraph (1) of this

1 subsection may attach unless a written notice of apparent
2 liability has been issued by the Secretary ~~Director~~ and
3 received by the respondent, or the Secretary ~~Director~~ sends
4 written notice of apparent liability by registered or
5 certified mail, return receipt requested, to the last known
6 address of the respondent. Any respondent so notified must
7 be granted an opportunity to request a hearing within 10
8 days from receipt of notice, or to show in writing, why he
9 should not be held liable. A notice issued under this
10 Section must set forth the date, facts and nature of the
11 act or omission with which the respondent is charged and
12 must specifically identify the particular provision of
13 this Article, rule, regulation or order of which a
14 violation is charged.

15 (3) No forfeiture liability under paragraph (1) of this
16 subsection may attach for any violation occurring more than
17 2 years prior to the date of issuance of the notice of
18 apparent liability and in no event may the total civil
19 penalty forfeiture imposed for the acts or omissions set
20 forth in any one notice of apparent liability exceed
21 \$100,000.

22 (4) All administrative hearings conducted pursuant to
23 this Article are subject to 50 Ill. Adm. Code 2402 and all
24 administrative hearings are subject to the Administrative
25 Review Law.

26 (5) The civil penalty forfeitures provided for in this
27 Section are payable to the General Revenue Fund of the
28 State of Illinois, and may be recovered in a civil suit in
29 the name of the State of Illinois brought in the Circuit
30 Court in Sangamon County or in the Circuit Court of the
31 county where the respondent is domiciled or has its
32 principal operating office.

33 (6) In any case where the Secretary ~~Director~~ issues a
34 notice of apparent liability looking toward the imposition

1 of a civil penalty forfeiture under this Section that fact
2 may not be used in any other proceeding before the
3 Secretary ~~Director~~ to the prejudice of the respondent to
4 whom the notice was issued, unless (a) the civil penalty
5 forfeiture has been paid, or (b) a court has ordered
6 payment of the civil penalty forfeiture and that order has
7 become final.

8 (7) When any person or company has a license or
9 certificate of authority under this Code and knowingly
10 fails or refuses to comply with a lawful order of the
11 Secretary ~~Director~~ requiring compliance with this Article,
12 entered after notice and hearing, within the period of time
13 specified in the order, the Secretary ~~Director~~ may, in
14 addition to any other penalty or authority provided, revoke
15 or refuse to renew the license or certificate of authority
16 of such person or company, or may suspend the license or
17 certificate of authority of such person or company until
18 compliance with such order has been obtained.

19 (8) When any person or company has a license or
20 certificate of authority under this Code and knowingly
21 fails or refuses to comply with any provisions of this
22 Article, the Secretary ~~Director~~ may, after notice and
23 hearing, in addition to any other penalty provided, revoke
24 or refuse to renew the license or certificate of authority
25 of such person or company, or may suspend the license or
26 certificate of authority of such person or company, until
27 compliance with such provision of this Article has been
28 obtained.

29 (9) No suspension or revocation under this Section may
30 become effective until 5 days from the date that the notice
31 of suspension or revocation has been personally delivered
32 or delivered by registered or certified mail to the company
33 or person. A suspension or revocation under this Section is
34 stayed upon the filing, by the company or person, of a

1 petition for judicial review under the Administrative
2 Review Law.

3 (Source: P.A. 93-32, eff. 7-1-03.)

4 Section 315. The Medical Practice Act of 1987 is amended by
5 changing Sections 7, 22, 23, 24, and 36 as follows:

6 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

7 (Section scheduled to be repealed on January 1, 2007)

8 Sec. 7. Medical Disciplinary Board.

9 (A) There is hereby created the Illinois State Medical
10 Disciplinary Board (hereinafter referred to as the
11 "Disciplinary Board"). The Disciplinary Board shall consist of
12 9 members, to be appointed by the Governor by and with the
13 advice and consent of the Senate. All shall be residents of the
14 State, not more than 5 of whom shall be members of the same
15 political party. Five members shall be physicians licensed to
16 practice medicine in all of its branches in Illinois possessing
17 the degree of doctor of medicine. Two shall be members of the
18 public, who shall not be engaged in any way, directly or
19 indirectly, as providers of health care. The 2 public members
20 shall act as voting members. One member shall be a physician
21 licensed to practice in Illinois possessing the degree of
22 doctor of osteopathy or osteopathic medicine. One member shall
23 be a physician licensed to practice in Illinois and possessing
24 the degree of doctor of chiropractic.

25 (B) Members of the Disciplinary Board shall be appointed
26 for terms of 4 years. Upon the expiration of the term of any
27 member, their successor shall be appointed for a term of 4
28 years by the Governor by and with the advice and consent of the
29 Senate. The Governor shall fill any vacancy for the remainder
30 of the unexpired term by and with the advice and consent of the
31 Senate. Upon recommendation of the Board, any member of the
32 Disciplinary Board may be removed by the Governor for

1 misfeasance, malfeasance, or wilful neglect of duty, after
2 notice, and a public hearing, unless such notice and hearing
3 shall be expressly waived in writing. Each member shall serve
4 on the Disciplinary Board until their successor is appointed
5 and qualified. No member of the Disciplinary Board shall serve
6 more than 2 consecutive 4 year terms.

7 In making appointments the Governor shall attempt to insure
8 that the various social and geographic regions of the State of
9 Illinois are properly represented.

10 In making the designation of persons to act for the several
11 professions represented on the Disciplinary Board, the
12 Governor shall give due consideration to recommendations by
13 members of the respective professions and by organizations
14 therein.

15 (C) The Disciplinary Board shall annually elect one of its
16 voting members as chairperson and one as vice chairperson. No
17 officer shall be elected more than twice in succession to the
18 same office. Each officer shall serve until their successor has
19 been elected and qualified.

20 (D) (Blank).

21 (E) Four voting members of the Disciplinary Board shall
22 constitute a quorum. A vacancy in the membership of the
23 Disciplinary Board shall not impair the right of a quorum to
24 exercise all the rights and perform all the duties of the
25 Disciplinary Board. Any action taken by the Disciplinary Board
26 under this Act may be authorized by resolution at any regular
27 or special meeting and each such resolution shall take effect
28 immediately. The Disciplinary Board shall meet at least
29 quarterly. The Disciplinary Board is empowered to adopt all
30 rules and regulations necessary and incident to the powers
31 granted to it under this Act.

32 (F) Each member, and member-officer, of the Disciplinary
33 Board shall receive a per diem stipend as the Secretary
34 ~~Director~~ of the Department, hereinafter referred to as the

1 Secretary Director, shall determine. The Secretary Director
2 shall also determine the per diem stipend that each ex-officio
3 member shall receive. Each member shall be paid their necessary
4 expenses while engaged in the performance of their duties.

5 (G) The Secretary Director shall select a Chief Medical
6 Coordinator and not less than 2 ~~a~~ Deputy Medical Coordinators
7 ~~Coordinator~~ who shall not be members of the Disciplinary Board.
8 Each medical coordinator shall be a physician licensed to
9 practice medicine in all of its branches, and the Secretary
10 ~~Director~~ shall set their rates of compensation. The Secretary
11 ~~Director~~ shall assign at least one medical coordinator to a
12 region composed of Cook County and such other counties as the
13 Secretary Director may deem appropriate, and such medical
14 coordinator or coordinators shall locate their office in
15 Chicago. The Secretary Director shall assign at least one ~~the~~
16 ~~remaining~~ medical coordinator to a region composed of the
17 balance of counties in the State, and such medical coordinator
18 or coordinators shall locate their office in Springfield. Each
19 medical coordinator shall be the chief enforcement officer of
20 this Act in his or her ~~their~~ assigned region and shall serve at
21 the will of the Disciplinary Board.

22 The Secretary Director shall employ, in conformity with the
23 Personnel Code, not less than one full time investigator for
24 every 2,500 ~~5000~~ physicians licensed in the State. Each
25 investigator shall be a college graduate with at least 2 years'
26 investigative experience or one year advanced medical
27 education. Upon the written request of the Disciplinary Board,
28 the Secretary Director shall employ, in conformity with the
29 Personnel Code, such other professional, technical,
30 investigative, and clerical help, either on a full or part-time
31 basis as the Disciplinary Board deems necessary for the proper
32 performance of its duties.

33 (H) Upon the specific request of the Disciplinary Board,
34 signed by either the chairman, vice chairman, or a medical

1 coordinator of the Disciplinary Board, the Department of Human
2 Services or the Department of State Police shall make available
3 any and all information that they have in their possession
4 regarding a particular case then under investigation by the
5 Disciplinary Board.

6 (I) Members of the Disciplinary Board shall be immune from
7 suit in any action based upon any disciplinary proceedings or
8 other acts performed in good faith as members of the
9 Disciplinary Board.

10 (J) The Disciplinary Board may compile and establish a
11 statewide roster of physicians and other medical
12 professionals, including the several medical specialties, of
13 such physicians and medical professionals, who have agreed to
14 serve from time to time as advisors to the medical
15 coordinators. Such advisors shall assist the medical
16 coordinators or the Disciplinary Board in their investigations
17 and participation in complaints against physicians. Such
18 advisors shall serve under contract and shall be reimbursed at
19 a reasonable rate for the services provided, plus reasonable
20 expenses incurred. While serving in this capacity, the advisor,
21 for any act undertaken in good faith and in the conduct of
22 their duties under this Section, shall be immune from civil
23 suit.

24 (Source: P.A. 93-138, eff. 7-10-03.)

25 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

26 (Section scheduled to be repealed on January 1, 2007)

27 Sec. 22. Disciplinary action.

28 (A) The Department may revoke, suspend, place on
29 probationary status, refuse to renew, or take any other
30 disciplinary action as the Department may deem proper with
31 regard to the license or visiting professor permit of any
32 person issued under this Act to practice medicine, or to treat
33 human ailments without the use of drugs and without operative

1 surgery upon any of the following grounds:

2 (1) Performance of an elective abortion in any place,
3 locale, facility, or institution other than:

4 (a) a facility licensed pursuant to the Ambulatory
5 Surgical Treatment Center Act;

6 (b) an institution licensed under the Hospital
7 Licensing Act; or

8 (c) an ambulatory surgical treatment center or
9 hospitalization or care facility maintained by the
10 State or any agency thereof, where such department or
11 agency has authority under law to establish and enforce
12 standards for the ambulatory surgical treatment
13 centers, hospitalization, or care facilities under its
14 management and control; or

15 (d) ambulatory surgical treatment centers,
16 hospitalization or care facilities maintained by the
17 Federal Government; or

18 (e) ambulatory surgical treatment centers,
19 hospitalization or care facilities maintained by any
20 university or college established under the laws of
21 this State and supported principally by public funds
22 raised by taxation.

23 (2) Performance of an abortion procedure in a wilful
24 and wanton manner on a woman who was not pregnant at the
25 time the abortion procedure was performed.

26 (3) The conviction of a felony in this or any other
27 jurisdiction, except as otherwise provided in subsection B
28 of this Section, whether or not related to practice under
29 this Act, or the entry of a guilty or nolo contendere plea
30 to a felony charge.

31 (4) Gross negligence in practice under this Act.

32 (5) Engaging in dishonorable, unethical or
33 unprofessional conduct of a character likely to deceive,
34 defraud or harm the public.

1 (6) Obtaining any fee by fraud, deceit, or
2 misrepresentation.

3 (7) Habitual or excessive use or abuse of drugs defined
4 in law as controlled substances, of alcohol, or of any
5 other substances which results in the inability to practice
6 with reasonable judgment, skill or safety.

7 (8) Practicing under a false or, except as provided by
8 law, an assumed name.

9 (9) Fraud or misrepresentation in applying for, or
10 procuring, a license under this Act or in connection with
11 applying for renewal of a license under this Act.

12 (10) Making a false or misleading statement regarding
13 their skill or the efficacy or value of the medicine,
14 treatment, or remedy prescribed by them at their direction
15 in the treatment of any disease or other condition of the
16 body or mind.

17 (11) Allowing another person or organization to use
18 their license, procured under this Act, to practice.

19 (12) Disciplinary action of another state or
20 jurisdiction against a license or other authorization to
21 practice as a medical doctor, doctor of osteopathy, doctor
22 of osteopathic medicine or doctor of chiropractic, a
23 certified copy of the record of the action taken by the
24 other state or jurisdiction being prima facie evidence
25 thereof.

26 (13) Violation of any provision of this Act or of the
27 Medical Practice Act prior to the repeal of that Act, or
28 violation of the rules, or a final administrative action of
29 the Secretary ~~Director~~, after consideration of the
30 recommendation of the Disciplinary Board.

31 (14) Dividing with anyone other than physicians with
32 whom the licensee practices in a partnership, Professional
33 Association, limited liability company, or Medical or
34 Professional Corporation any fee, commission, rebate or

1 other form of compensation for any professional services
2 not actually and personally rendered. Nothing contained in
3 this subsection prohibits persons holding valid and
4 current licenses under this Act from practicing medicine in
5 partnership under a partnership agreement, including a
6 limited liability partnership, in a limited liability
7 company under the Limited Liability Company Act, in a
8 corporation authorized by the Medical Corporation Act, as
9 an association authorized by the Professional Association
10 Act, or in a corporation under the Professional Corporation
11 Act or from pooling, sharing, dividing or apportioning the
12 fees and monies received by them or by the partnership,
13 corporation or association in accordance with the
14 partnership agreement or the policies of the Board of
15 Directors of the corporation or association. Nothing
16 contained in this subsection prohibits 2 or more
17 corporations authorized by the Medical Corporation Act,
18 from forming a partnership or joint venture of such
19 corporations, and providing medical, surgical and
20 scientific research and knowledge by employees of these
21 corporations if such employees are licensed under this Act,
22 or from pooling, sharing, dividing, or apportioning the
23 fees and monies received by the partnership or joint
24 venture in accordance with the partnership or joint venture
25 agreement. Nothing contained in this subsection shall
26 abrogate the right of 2 or more persons, holding valid and
27 current licenses under this Act, to each receive adequate
28 compensation for concurrently rendering professional
29 services to a patient and divide a fee; provided, the
30 patient has full knowledge of the division, and, provided,
31 that the division is made in proportion to the services
32 performed and responsibility assumed by each.

33 (15) A finding by the Medical Disciplinary Board that
34 the registrant after having his or her license placed on

1 probationary status or subjected to conditions or
2 restrictions violated the terms of the probation or failed
3 to comply with such terms or conditions.

4 (16) Abandonment of a patient.

5 (17) Prescribing, selling, administering,
6 distributing, giving or self-administering any drug
7 classified as a controlled substance (designated product)
8 or narcotic for other than medically accepted therapeutic
9 purposes.

10 (18) Promotion of the sale of drugs, devices,
11 appliances or goods provided for a patient in such manner
12 as to exploit the patient for financial gain of the
13 physician.

14 (19) Offering, undertaking or agreeing to cure or treat
15 disease by a secret method, procedure, treatment or
16 medicine, or the treating, operating or prescribing for any
17 human condition by a method, means or procedure which the
18 licensee refuses to divulge upon demand of the Department.

19 (20) Immoral conduct in the commission of any act
20 including, but not limited to, commission of an act of
21 sexual misconduct related to the licensee's practice.

22 (21) Wilfully making or filing false records or reports
23 in his or her practice as a physician, including, but not
24 limited to, false records to support claims against the
25 medical assistance program of the Department of Public Aid
26 under the Illinois Public Aid Code.

27 (22) Wilful omission to file or record, or wilfully
28 impeding the filing or recording, or inducing another
29 person to omit to file or record, medical reports as
30 required by law, or wilfully failing to report an instance
31 of suspected abuse or neglect as required by law.

32 (23) Being named as a perpetrator in an indicated
33 report by the Department of Children and Family Services
34 under the Abused and Neglected Child Reporting Act, and

1 upon proof by clear and convincing evidence that the
2 licensee has caused a child to be an abused child or
3 neglected child as defined in the Abused and Neglected
4 Child Reporting Act.

5 (24) Solicitation of professional patronage by any
6 corporation, agents or persons, or profiting from those
7 representing themselves to be agents of the licensee.

8 (25) Gross and wilful and continued overcharging for
9 professional services, including filing false statements
10 for collection of fees for which services are not rendered,
11 including, but not limited to, filing such false statements
12 for collection of monies for services not rendered from the
13 medical assistance program of the Department of Public Aid
14 under the Illinois Public Aid Code.

15 (26) A pattern of practice or other behavior which
16 demonstrates incapacity or incompetence to practice under
17 this Act.

18 (27) Mental illness or disability which results in the
19 inability to practice under this Act with reasonable
20 judgment, skill or safety.

21 (28) Physical illness, including, but not limited to,
22 deterioration through the aging process, or loss of motor
23 skill which results in a physician's inability to practice
24 under this Act with reasonable judgment, skill or safety.

25 (29) Cheating on or attempt to subvert the licensing
26 examinations administered under this Act.

27 (30) Wilfully or negligently violating the
28 confidentiality between physician and patient except as
29 required by law.

30 (31) The use of any false, fraudulent, or deceptive
31 statement in any document connected with practice under
32 this Act.

33 (32) Aiding and abetting an individual not licensed
34 under this Act in the practice of a profession licensed

1 under this Act.

2 (33) Violating state or federal laws or regulations
3 relating to controlled substances, legend drugs, or
4 ephedra, as defined in the Ephedra Prohibition Act.

5 (34) Failure to report to the Department any adverse
6 final action taken against them by another licensing
7 jurisdiction (any other state or any territory of the
8 United States or any foreign state or country), by any peer
9 review body, by any health care institution, by any
10 professional society or association related to practice
11 under this Act, by any governmental agency, by any law
12 enforcement agency, or by any court for acts or conduct
13 similar to acts or conduct which would constitute grounds
14 for action as defined in this Section.

15 (35) Failure to report to the Department surrender of a
16 license or authorization to practice as a medical doctor, a
17 doctor of osteopathy, a doctor of osteopathic medicine, or
18 doctor of chiropractic in another state or jurisdiction, or
19 surrender of membership on any medical staff or in any
20 medical or professional association or society, while
21 under disciplinary investigation by any of those
22 authorities or bodies, for acts or conduct similar to acts
23 or conduct which would constitute grounds for action as
24 defined in this Section.

25 (36) Failure to report to the Department any adverse
26 judgment, settlement, or award arising from a liability
27 claim related to acts or conduct similar to acts or conduct
28 which would constitute grounds for action as defined in
29 this Section.

30 (37) Failure to transfer copies of medical records as
31 required by law.

32 (38) Failure to furnish the Department, its
33 investigators or representatives, relevant information,
34 legally requested by the Department after consultation

1 with the Chief Medical Coordinator or the Deputy Medical
2 Coordinator.

3 (39) Violating the Health Care Worker Self-Referral
4 Act.

5 (40) Willful failure to provide notice when notice is
6 required under the Parental Notice of Abortion Act of 1995.

7 (41) Failure to establish and maintain records of
8 patient care and treatment as required by this law.

9 (42) Entering into an excessive number of written
10 collaborative agreements with licensed advanced practice
11 nurses resulting in an inability to adequately collaborate
12 and provide medical direction.

13 (43) Repeated failure to adequately collaborate with
14 or provide medical direction to a licensed advanced
15 practice nurse.

16 Except for actions involving the ground numbered (26), all
17 ~~All~~ proceedings to suspend, revoke, place on probationary
18 status, or take any other disciplinary action as the Department
19 may deem proper, with regard to a license on any of the
20 foregoing grounds, must be commenced within 5 ~~3~~ years next
21 after receipt by the Department of a complaint alleging the
22 commission of or notice of the conviction order for any of the
23 acts described herein. Except for the grounds numbered (8),
24 (9), (26), and (29), no action shall be commenced more than 10
25 ~~5~~ years after the date of the incident or act alleged to have
26 violated this Section. For actions involving the ground
27 numbered (26), a pattern of practice or other behavior includes
28 all incidents alleged to be part of the pattern of practice or
29 other behavior that occurred or a report pursuant to Section 23
30 of this Act received within the 10-year period preceding the
31 filing of the complaint. In the event of the settlement of any
32 claim or cause of action in favor of the claimant or the
33 reduction to final judgment of any civil action in favor of the
34 plaintiff, such claim, cause of action or civil action being

1 grounded on the allegation that a person licensed under this
2 Act was negligent in providing care, the Department shall have
3 an additional period of 2 years ~~one year~~ from the date of
4 notification to the Department under Section 23 of this Act of
5 such settlement or final judgment in which to investigate and
6 commence formal disciplinary proceedings under Section 36 of
7 this Act, except as otherwise provided by law. The Department
8 shall expunge the records of discipline solely for
9 administrative matters 3 years after final disposition or after
10 the statute of limitations has expired, whichever is later. The
11 time during which the holder of the license was outside the
12 State of Illinois shall not be included within any period of
13 time limiting the commencement of disciplinary action by the
14 Department.

15 The entry of an order or judgment by any circuit court
16 establishing that any person holding a license under this Act
17 is a person in need of mental treatment operates as a
18 suspension of that license. That person may resume their
19 practice only upon the entry of a Departmental order based upon
20 a finding by the Medical Disciplinary Board that they have been
21 determined to be recovered from mental illness by the court and
22 upon the Disciplinary Board's recommendation that they be
23 permitted to resume their practice.

24 The Department may refuse to issue or take disciplinary
25 action concerning the license of any person who fails to file a
26 return, or to pay the tax, penalty or interest shown in a filed
27 return, or to pay any final assessment of tax, penalty or
28 interest, as required by any tax Act administered by the
29 Illinois Department of Revenue, until such time as the
30 requirements of any such tax Act are satisfied as determined by
31 the Illinois Department of Revenue.

32 The Department, upon the recommendation of the
33 Disciplinary Board, shall adopt rules which set forth standards
34 to be used in determining:

1 (a) when a person will be deemed sufficiently
2 rehabilitated to warrant the public trust;

3 (b) what constitutes dishonorable, unethical or
4 unprofessional conduct of a character likely to deceive,
5 defraud, or harm the public;

6 (c) what constitutes immoral conduct in the commission
7 of any act, including, but not limited to, commission of an
8 act of sexual misconduct related to the licensee's
9 practice; and

10 (d) what constitutes gross negligence in the practice
11 of medicine.

12 However, no such rule shall be admissible into evidence in
13 any civil action except for review of a licensing or other
14 disciplinary action under this Act.

15 In enforcing this Section, the Medical Disciplinary Board,
16 upon a showing of a possible violation, may compel any
17 individual licensed to practice under this Act, or who has
18 applied for licensure or a permit pursuant to this Act, to
19 submit to a mental or physical examination, or both, as
20 required by and at the expense of the Department. The examining
21 physician or physicians shall be those specifically designated
22 by the Disciplinary Board. The Medical Disciplinary Board or
23 the Department may order the examining physician to present
24 testimony concerning this mental or physical examination of the
25 licensee or applicant. No information shall be excluded by
26 reason of any common law or statutory privilege relating to
27 communication between the licensee or applicant and the
28 examining physician. The individual to be examined may have, at
29 his or her own expense, another physician of his or her choice
30 present during all aspects of the examination. Failure of any
31 individual to submit to mental or physical examination, when
32 directed, shall be grounds for suspension of his or her license
33 until such time as the individual submits to the examination if
34 the Disciplinary Board finds, after notice and hearing, that

1 the refusal to submit to the examination was without reasonable
2 cause. If the Disciplinary Board finds a physician unable to
3 practice because of the reasons set forth in this Section, the
4 Disciplinary Board shall require such physician to submit to
5 care, counseling, or treatment by physicians approved or
6 designated by the Disciplinary Board, as a condition for
7 continued, reinstated, or renewed licensure to practice. Any
8 physician, whose license was granted pursuant to Sections 9,
9 17, or 19 of this Act, or, continued, reinstated, renewed,
10 disciplined or supervised, subject to such terms, conditions or
11 restrictions who shall fail to comply with such terms,
12 conditions or restrictions, or to complete a required program
13 of care, counseling, or treatment, as determined by the Chief
14 Medical Coordinator or Deputy Medical Coordinators, shall be
15 referred to the Secretary ~~Director~~ for a determination as to
16 whether the licensee shall have their license suspended
17 immediately, pending a hearing by the Disciplinary Board. In
18 instances in which the Secretary ~~Director~~ immediately suspends
19 a license under this Section, a hearing upon such person's
20 license must be convened by the Disciplinary Board within 15
21 days after such suspension and completed without appreciable
22 delay. The Disciplinary Board shall have the authority to
23 review the subject physician's record of treatment and
24 counseling regarding the impairment, to the extent permitted by
25 applicable federal statutes and regulations safeguarding the
26 confidentiality of medical records.

27 An individual licensed under this Act, affected under this
28 Section, shall be afforded an opportunity to demonstrate to the
29 Disciplinary Board that they can resume practice in compliance
30 with acceptable and prevailing standards under the provisions
31 of their license.

32 The Department may promulgate rules for the imposition of
33 fines in disciplinary cases, not to exceed \$10,000 ~~\$5,000~~ for
34 each violation of this Act. Fines may be imposed in conjunction

1 with other forms of disciplinary action, but shall not be the
2 exclusive disposition of any disciplinary action arising out of
3 conduct resulting in death or injury to a patient. Any funds
4 collected from such fines shall be deposited in the Medical
5 Disciplinary Fund.

6 (B) The Department shall revoke the license or visiting
7 permit of any person issued under this Act to practice medicine
8 or to treat human ailments without the use of drugs and without
9 operative surgery, who has been convicted a second time of
10 committing any felony under the Illinois Controlled Substances
11 Act, or who has been convicted a second time of committing a
12 Class 1 felony under Sections 8A-3 and 8A-6 of the Illinois
13 Public Aid Code. A person whose license or visiting permit is
14 revoked under this subsection B of Section 22 of this Act shall
15 be prohibited from practicing medicine or treating human
16 ailments without the use of drugs and without operative
17 surgery.

18 (C) The Medical Disciplinary Board shall recommend to the
19 Department civil penalties and any other appropriate
20 discipline in disciplinary cases when the Board finds that a
21 physician willfully performed an abortion with actual
22 knowledge that the person upon whom the abortion has been
23 performed is a minor or an incompetent person without notice as
24 required under the Parental Notice of Abortion Act of 1995.
25 Upon the Board's recommendation, the Department shall impose,
26 for the first violation, a civil penalty of \$1,000 and for a
27 second or subsequent violation, a civil penalty of \$5,000.

28 (Source: P.A. 89-18, eff. 6-1-95; 89-201, eff. 1-1-96; 89-626,
29 eff. 8-9-96; 89-702, eff. 7-1-97; 90-742, eff. 8-13-98.)

30 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

31 (Section scheduled to be repealed on January 1, 2007)

32 Sec. 23. Reports relating to professional conduct and
33 capacity.

1 (A) Entities required to report.

2 (1) Health care institutions. The chief administrator
3 or executive officer of any health care institution
4 licensed by the Illinois Department of Public Health shall
5 report to the Disciplinary Board when any person's clinical
6 privileges are terminated or are restricted based on a
7 final determination, in accordance with that institution's
8 by-laws or rules and regulations, that a person has either
9 committed an act or acts which may directly threaten
10 patient care, and not of an administrative nature, or that
11 a person may be mentally or physically disabled in such a
12 manner as to endanger patients under that person's care.
13 Such officer also shall report if a person accepts
14 voluntary termination or restriction of clinical
15 privileges in lieu of formal action based upon conduct
16 related directly to patient care and not of an
17 administrative nature, or in lieu of formal action seeking
18 to determine whether a person may be mentally or physically
19 disabled in such a manner as to endanger patients under
20 that person's care. The Medical Disciplinary Board shall,
21 by rule, provide for the reporting to it of all instances
22 in which a person, licensed under this Act, who is impaired
23 by reason of age, drug or alcohol abuse or physical or
24 mental impairment, is under supervision and, where
25 appropriate, is in a program of rehabilitation. Such
26 reports shall be strictly confidential and may be reviewed
27 and considered only by the members of the Disciplinary
28 Board, or by authorized staff as provided by rules of the
29 Disciplinary Board. Provisions shall be made for the
30 periodic report of the status of any such person not less
31 than twice annually in order that the Disciplinary Board
32 shall have current information upon which to determine the
33 status of any such person. Such initial and periodic
34 reports of impaired physicians shall not be considered

1 records within the meaning of The State Records Act and
2 shall be disposed of, following a determination by the
3 Disciplinary Board that such reports are no longer
4 required, in a manner and at such time as the Disciplinary
5 Board shall determine by rule. The filing of such reports
6 shall be construed as the filing of a report for purposes
7 of subsection (C) of this Section.

8 (2) Professional associations. The President or chief
9 executive officer of any association or society, of persons
10 licensed under this Act, operating within this State shall
11 report to the Disciplinary Board when the association or
12 society renders a final determination that a person has
13 committed unprofessional conduct related directly to
14 patient care or that a person may be mentally or physically
15 disabled in such a manner as to endanger patients under
16 that person's care.

17 (3) Professional liability insurers. Every insurance
18 company which offers policies of professional liability
19 insurance to persons licensed under this Act, or any other
20 entity which seeks to indemnify the professional liability
21 of a person licensed under this Act, shall report to the
22 Disciplinary Board the settlement of any claim or cause of
23 action, or final judgment rendered in any cause of action,
24 which alleged negligence in the furnishing of medical care
25 by such licensed person when such settlement or final
26 judgment is in favor of the plaintiff.

27 (4) State's Attorneys. The State's Attorney of each
28 county shall report to the Disciplinary Board all instances
29 in which a person licensed under this Act is convicted or
30 otherwise found guilty of the commission of any felony. The
31 State's Attorney of each county may report to the
32 Disciplinary Board through a verified complaint any
33 instance in which the State's Attorney believes that a
34 physician has willfully violated the notice requirements

1 of the Parental Notice of Abortion Act of 1995.

2 (5) State agencies. All agencies, boards, commissions,
3 departments, or other instrumentalities of the government
4 of the State of Illinois shall report to the Disciplinary
5 Board any instance arising in connection with the
6 operations of such agency, including the administration of
7 any law by such agency, in which a person licensed under
8 this Act has either committed an act or acts which may be a
9 violation of this Act or which may constitute
10 unprofessional conduct related directly to patient care or
11 which indicates that a person licensed under this Act may
12 be mentally or physically disabled in such a manner as to
13 endanger patients under that person's care.

14 (B) Mandatory reporting. All reports required by items
15 (34), (35), and (36) of subsection (A) of Section 22 and by
16 Section 23 shall be submitted to the Disciplinary Board in a
17 timely fashion. The reports shall be filed in writing within 60
18 days after a determination that a report is required under this
19 Act. All reports shall contain the following information:

20 (1) The name, address and telephone number of the
21 person making the report.

22 (2) The name, address and telephone number of the
23 person who is the subject of the report.

24 (3) The name and date of birth ~~or other means of~~
25 ~~identification~~ of any patient or patients whose treatment
26 is a subject of the report, if available, or other means of
27 identification if such information is not available,
28 identification of the hospital or other healthcare
29 facility where the care at issue in the report was
30 rendered, provided, however, no medical records may be
31 revealed ~~without the written consent of the patient or~~
32 ~~patients.~~

33 (4) A brief description of the facts which gave rise to
34 the issuance of the report, including the dates of any

1 occurrences deemed to necessitate the filing of the report.

2 (5) If court action is involved, the identity of the
3 court in which the action is filed, along with the docket
4 number and date of filing of the action.

5 (6) Any further pertinent information which the
6 reporting party deems to be an aid in the evaluation of the
7 report.

8 ~~The Department shall have the right to inform patients of~~
9 ~~the right to provide written consent for the Department to~~
10 ~~obtain copies of hospital and medical records.~~ The Disciplinary
11 Board or Department may also exercise the power under Section
12 38 of this Act to subpoena copies of hospital or medical
13 records in mandatory report cases alleging death or permanent
14 bodily injury ~~when consent to obtain records is not provided by~~
15 ~~a patient or legal representative.~~ Appropriate rules shall be
16 adopted by the Department with the approval of the Disciplinary
17 Board.

18 When the Department has received written reports
19 concerning incidents required to be reported in items (34),
20 (35), and (36) of subsection (A) of Section 22, the licensee's
21 failure to report the incident to the Department under those
22 items shall not be the sole grounds for disciplinary action.

23 Nothing contained in this Section shall act to in any way,
24 waive or modify the confidentiality of medical reports and
25 committee reports to the extent provided by law. Any
26 information reported or disclosed shall be kept for the
27 confidential use of the Disciplinary Board, the Medical
28 Coordinators, the Disciplinary Board's attorneys, the medical
29 investigative staff, and authorized clerical staff, as
30 provided in this Act, and shall be afforded the same status as
31 is provided information concerning medical studies in Part 21
32 of Article VIII of the Code of Civil Procedure, except that the
33 Department may disclose information and documents to a federal,
34 State, or local law enforcement agency pursuant to a subpoena

1 in an ongoing criminal investigation. Furthermore, information
2 and documents disclosed to a federal, State, or local law
3 enforcement agency may be used by that agency only for the
4 investigation and prosecution of a criminal offense.

5 (C) Immunity from prosecution. Any individual or
6 organization acting in good faith, and not in a wilful and
7 wanton manner, in complying with this Act by providing any
8 report or other information to the Disciplinary Board or a peer
9 review committee, or assisting in the investigation or
10 preparation of such information, or by voluntarily reporting to
11 the Disciplinary Board or a peer review committee information
12 regarding alleged errors or negligence by a person licensed
13 under this Act, or by participating in proceedings of the
14 Disciplinary Board or a peer review committee, or by serving as
15 a member of the Disciplinary Board or a peer review committee,
16 shall not, as a result of such actions, be subject to criminal
17 prosecution or civil damages.

18 (D) Indemnification. Members of the Disciplinary Board,
19 the Medical Coordinators, the Disciplinary Board's attorneys,
20 the medical investigative staff, physicians retained under
21 contract to assist and advise the medical coordinators in the
22 investigation, and authorized clerical staff shall be
23 indemnified by the State for any actions occurring within the
24 scope of services on the Disciplinary Board, done in good faith
25 and not wilful and wanton in nature. The Attorney General shall
26 defend all such actions unless he or she determines either that
27 there would be a conflict of interest in such representation or
28 that the actions complained of were not in good faith or were
29 wilful and wanton.

30 Should the Attorney General decline representation, the
31 member shall have the right to employ counsel of his or her
32 choice, whose fees shall be provided by the State, after
33 approval by the Attorney General, unless there is a
34 determination by a court that the member's actions were not in

1 good faith or were wilful and wanton.

2 The member must notify the Attorney General within 7 days
3 of receipt of notice of the initiation of any action involving
4 services of the Disciplinary Board. Failure to so notify the
5 Attorney General shall constitute an absolute waiver of the
6 right to a defense and indemnification.

7 The Attorney General shall determine within 7 days after
8 receiving such notice, whether he or she will undertake to
9 represent the member.

10 (E) Deliberations of Disciplinary Board. Upon the receipt
11 of any report called for by this Act, other than those reports
12 of impaired persons licensed under this Act required pursuant
13 to the rules of the Disciplinary Board, the Disciplinary Board
14 shall notify in writing, by certified mail, the person who is
15 the subject of the report. Such notification shall be made
16 within 30 days of receipt by the Disciplinary Board of the
17 report.

18 The notification shall include a written notice setting
19 forth the person's right to examine the report. Included in
20 such notification shall be the address at which the file is
21 maintained, the name of the custodian of the reports, and the
22 telephone number at which the custodian may be reached. The
23 person who is the subject of the report shall submit a written
24 statement responding, clarifying, adding to, or proposing the
25 amending of the report previously filed. The person who is the
26 subject of the report shall also submit with the written
27 statement any medical records related to the report. The
28 statement and accompanying medical records shall become a
29 permanent part of the file and must be received by the
30 Disciplinary Board no more than 30 ~~60~~ days after the date on
31 which the person was notified by the Disciplinary Board of the
32 existence of the original report.

33 The Disciplinary Board shall review all reports received by
34 it, together with any supporting information and responding

1 statements submitted by persons who are the subject of reports.
2 The review by the Disciplinary Board shall be in a timely
3 manner but in no event, shall the Disciplinary Board's initial
4 review of the material contained in each disciplinary file be
5 less than 61 days nor more than 180 days after the receipt of
6 the initial report by the Disciplinary Board.

7 When the Disciplinary Board makes its initial review of the
8 materials contained within its disciplinary files, the
9 Disciplinary Board shall, in writing, make a determination as
10 to whether there are sufficient facts to warrant further
11 investigation or action. Failure to make such determination
12 within the time provided shall be deemed to be a determination
13 that there are not sufficient facts to warrant further
14 investigation or action.

15 Should the Disciplinary Board find that there are not
16 sufficient facts to warrant further investigation, or action,
17 the report shall be accepted for filing and the matter shall be
18 deemed closed and so reported to the Secretary ~~Director~~. The
19 Secretary ~~Director~~ shall then have 30 days to accept the
20 Medical Disciplinary Board's decision or request further
21 investigation. The Secretary ~~Director~~ shall inform the Board in
22 writing of the decision to request further investigation,
23 including the specific reasons for the decision. The individual
24 or entity filing the original report or complaint and the
25 person who is the subject of the report or complaint shall be
26 notified in writing by the Secretary ~~Director~~ of any final
27 action on their report or complaint.

28 (F) Summary reports. The Disciplinary Board shall prepare,
29 on a timely basis, but in no event less than one every other
30 month, a summary report of final actions taken upon
31 disciplinary files maintained by the Disciplinary Board. The
32 summary reports shall be sent by the Disciplinary Board to
33 every health care facility licensed by the Illinois Department
34 of Public Health, every professional association and society of

1 persons licensed under this Act functioning on a statewide
2 basis in this State, the American Medical Association, the
3 American Osteopathic Association, the American Chiropractic
4 Association, all insurers providing professional liability
5 insurance to persons licensed under this Act in the State of
6 Illinois, the Federation of State Medical Licensing Boards, and
7 the Illinois Pharmacists Association.

8 (G) Any violation of this Section shall be a Class A
9 misdemeanor.

10 (H) If any such person violates the provisions of this
11 Section an action may be brought in the name of the People of
12 the State of Illinois, through the Attorney General of the
13 State of Illinois, for an order enjoining such violation or for
14 an order enforcing compliance with this Section. Upon filing of
15 a verified petition in such court, the court may issue a
16 temporary restraining order without notice or bond and may
17 preliminarily or permanently enjoin such violation, and if it
18 is established that such person has violated or is violating
19 the injunction, the court may punish the offender for contempt
20 of court. Proceedings under this paragraph shall be in addition
21 to, and not in lieu of, all other remedies and penalties
22 provided for by this Section.

23 (Source: P.A. 89-18, eff. 6-1-95; 89-702, eff. 7-1-97; 90-699,
24 eff. 1-1-99.)

25 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

26 (Section scheduled to be repealed on January 1, 2007)

27 Sec. 24. Report of violations; medical associations. Any
28 physician licensed under this Act, the Illinois State Medical
29 Society, the Illinois Association of Osteopathic Physicians
30 and Surgeons, the Illinois Chiropractic Society, the Illinois
31 Prairie State Chiropractic Association, or any component
32 societies of any of these 4 groups, and any other person, may
33 report to the Disciplinary Board any information the physician,

1 association, society, or person may have that appears to show
2 that a physician is or may be in violation of any of the
3 provisions of Section 22 of this Act.

4 The Department may enter into agreements with the Illinois
5 State Medical Society, the Illinois Association of Osteopathic
6 Physicians and Surgeons, the Illinois Prairie State
7 Chiropractic Association, or the Illinois Chiropractic Society
8 to allow these organizations to assist the Disciplinary Board
9 in the review of alleged violations of this Act. Subject to the
10 approval of the Department, any organization party to such an
11 agreement may subcontract with other individuals or
12 organizations to assist in review.

13 Any physician, association, society, or person
14 participating in good faith in the making of a report, under
15 this Act or participating in or assisting with an investigation
16 or review under this Act ~~Section~~ shall have immunity from any
17 civil, criminal, or other liability that might result by reason
18 of those actions.

19 The medical information in the custody of an entity under
20 contract with the Department participating in an investigation
21 or review shall be privileged and confidential to the same
22 extent as are information and reports under the provisions of
23 Part 21 of Article VIII of the Code of Civil Procedure.

24 Upon request by the Department after a mandatory report has
25 been filed with the Department, an attorney for any party
26 seeking to recover damages for injuries or death by reason of
27 medical, hospital, or other healing art malpractice shall
28 provide patient records related to the physician involved in
29 the disciplinary proceeding to the Department within 30 days of
30 the Department's request for use by the Department in any
31 disciplinary matter under this Act. An attorney who provides
32 patient records to the Department in accordance with this
33 requirement shall not be deemed to have violated any
34 attorney-client privilege. Notwithstanding any other provision

1 of law, consent by a patient shall not be required for the
2 provision of patient records in accordance with this
3 requirement.

4 For the purpose of any civil or criminal proceedings, the
5 good faith of any physician, association, society or person
6 shall be presumed. The Disciplinary Board may request the
7 Illinois State Medical Society, the Illinois Association of
8 Osteopathic Physicians and Surgeons, the Illinois Prairie
9 State Chiropractic Association, or the Illinois Chiropractic
10 Society to assist the Disciplinary Board in preparing for or
11 conducting any medical competency examination as the Board may
12 deem appropriate.

13 (Source: P.A. 88-324.)

14 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

15 (Section scheduled to be repealed on January 1, 2007)

16 Sec. 36. Upon the motion of either the Department or the
17 Disciplinary Board or upon the verified complaint in writing of
18 any person setting forth facts which, if proven, would
19 constitute grounds for suspension or revocation under Section
20 22 of this Act, the Department shall investigate the actions of
21 any person, so accused, who holds or represents that they hold
22 a license. Such person is hereinafter called the accused.

23 The Department shall, before suspending, revoking, placing
24 on probationary status, or taking any other disciplinary action
25 as the Department may deem proper with regard to any license at
26 least 30 days prior to the date set for the hearing, notify the
27 accused in writing of any charges made and the time and place
28 for a hearing of the charges before the Disciplinary Board,
29 direct them to file their written answer thereto to the
30 Disciplinary Board under oath within 20 days after the service
31 on them of such notice and inform them that if they fail to
32 file such answer default will be taken against them and their
33 license may be suspended, revoked, placed on probationary

1 status, or have other disciplinary action, including limiting
2 the scope, nature or extent of their practice, as the
3 Department may deem proper taken with regard thereto.

4 Where a physician has been found, upon complaint and
5 investigation of the Department, and after hearing, to have
6 performed an abortion procedure in a wilful and wanton manner
7 upon a woman who was not pregnant at the time such abortion
8 procedure was performed, the Department shall automatically
9 revoke the license of such physician to practice medicine in
10 Illinois.

11 Such written notice and any notice in such proceedings
12 thereafter may be served by delivery of the same, personally,
13 to the accused person, or by mailing the same by registered or
14 certified mail to the address last theretofore specified by the
15 accused in their last notification to the Department.

16 All information gathered by the Department during its
17 investigation including information subpoenaed under Section
18 23 or 38 of this Act and the investigative file shall be kept
19 for the confidential use of the Secretary Director,
20 Disciplinary Board, the Medical Coordinators, persons employed
21 by contract to advise the Medical Coordinator or the
22 Department, the Disciplinary Board's attorneys, the medical
23 investigative staff, and authorized clerical staff, as
24 provided in this Act and shall be afforded the same status as
25 is provided information concerning medical studies in Part 21
26 of Article VIII of the Code of Civil Procedure, except that the
27 Department may disclose information and documents to a federal,
28 State, or local law enforcement agency pursuant to a subpoena
29 in an ongoing criminal investigation. Furthermore, information
30 and documents disclosed to a federal, State, or local law
31 enforcement agency may be used by that agency only for the
32 investigation and prosecution of a criminal offense.

33 (Source: P.A. 90-699, eff. 1-1-99.)

1 Section 320. The Clerks of Courts Act is amended by adding
2 Section 27.10 as follows:

3 (705 ILCS 105/27.10 new)

4 Sec. 27.10. Secretary of Financial and Professional
5 Regulation. Each clerk of the circuit court shall provide to
6 the Secretary of Financial and Professional Regulation such
7 information as the Secretary of Financial and Professional
8 Regulation requests under Section 155.19 of the Illinois
9 Insurance Code.

10 Section 325. The Health Care Arbitration Act is amended by
11 changing Sections 8 and 9 as follows:

12 (710 ILCS 15/8) (from Ch. 10, par. 208)

13 Sec. 8. Conditions. Every health care arbitration
14 agreement shall be subject to the following conditions:

15 (a) The agreement is not a condition to the rendering of
16 health care services by any party and the agreement has been
17 executed by the recipient of health care services at the
18 inception of or during the term of provision of services for a
19 specific cause by either a health care provider or a hospital;
20 and

21 (b) The agreement is a separate instrument complete in
22 itself and not a part of any other contract or instrument and
23 an executed copy of the agreement shall be provided to the
24 patient or the patient's legal representative upon signing; and

25 (c) The agreement may not limit, impair, or waive any
26 substantive rights or defenses of any party, including the
27 statute of limitations; and

28 (d) The agreement shall not limit, impair, or waive the
29 procedural rights to be heard, to present material evidence, to
30 cross-examine witnesses, and to be represented by an attorney,
31 or other procedural rights of due process of any party.

1 (e) (Blank). ~~As a part of the discharge planning process~~
2 ~~the patient or, if appropriate, members of his family must be~~
3 ~~given a copy of the health care arbitration agreement~~
4 ~~previously executed by or for the patient and shall re-affirm~~
5 ~~it. Failure to comply with this provision during the discharge~~
6 ~~planning process shall void the health care arbitration~~
7 ~~agreement.~~

8 (f) The changes to this Section made by this amendatory Act
9 of the 94th General Assembly apply to health care arbitration
10 agreements executed on or after its effective date.

11 (Source: P.A. 80-1012.)

12 (710 ILCS 15/9) (from Ch. 10, par. 209)

13 Sec. 9. Mandatory Provisions.

14 (a) Every health care arbitration agreement shall be
15 clearly captioned "Health Care Arbitration Agreement".

16 (b) Every health care arbitration agreement in relation to
17 health care services rendered during hospitalization shall
18 specify the date of commencement of hospitalization. Every
19 health care arbitration agreement in relation to health care
20 services not rendered during hospitalization shall state the
21 specific cause for which the services are provided.

22 (c) Every health care arbitration agreement may be
23 cancelled by any signatory (1) within 120 ~~60~~ days of its
24 execution or within 120 ~~60~~ days of the date of the patient's
25 discharge from the hospital, whichever is later, as to an
26 agreement in relation to health care services rendered during
27 hospitalization, ~~provided, that if executed other than at the~~
28 ~~time of discharge of the patient from the hospital, the health~~
29 ~~care arbitration agreement be reaffirmed at the time of the~~
30 ~~discharge planning process in the same manner as provided for~~
31 ~~in the execution of the original agreement;~~ or (2) within 120
32 ~~60~~ days of the date of its execution, or the last date of
33 treatment by the health care provider, whichever is later, as

1 to an agreement in relation to health care services not
2 rendered during hospitalization. Provided, that no health care
3 arbitration agreement shall be valid after 4 ~~2~~ years from the
4 date of its execution. An employee of a hospital or health care
5 provider who is not a signatory to an agreement may cancel such
6 agreement as to himself until 30 days following his
7 notification that he is a party to a dispute or issue on which
8 arbitration has been demanded pursuant to such agreement. If
9 any person executing a health care arbitration agreement dies
10 before the period of cancellation as outlined above, the
11 personal representative of the decedent shall have the right to
12 cancel the health care arbitration agreement within 60 days of
13 the date of his appointment as the legal representative of the
14 decedent's estate. ~~Provided, that if no legal representative is~~
15 ~~appointed within 6 months of the death of said decedent the~~
16 ~~next of kin of such decedent shall have the right to cancel the~~
17 ~~health care arbitration agreement within 8 months from the date~~
18 ~~of death.~~

19 (d) Every health care arbitration agreement shall contain
20 immediately above the signature lines, in upper case type in
21 printed letters of at least 3/16 inch height, a caption and
22 paragraphs as follows:

23 "AGREEMENT TO ARBITRATE HEALTH CARE

24 NEGLIGENCE CLAIMS

25 NOTICE TO PATIENT

26 YOU CANNOT BE REQUIRED TO SIGN THIS AGREEMENT IN ORDER TO
27 RECEIVE TREATMENT. BY SIGNING THIS AGREEMENT, YOUR RIGHT TO
28 TRIAL BY A JURY OR A JUDGE IN A COURT WILL BE BARRED AS TO
29 ANY DISPUTE RELATING TO INJURIES THAT MAY RESULT FROM
30 NEGLIGENCE DURING YOUR TREATMENT OR CARE, AND WILL BE
31 REPLACED BY AN ARBITRATION PROCEDURE.

32 THIS AGREEMENT MAY BE CANCELLED WITHIN 120 ~~60~~ DAYS OF
33 SIGNING OR 120 ~~60~~ DAYS AFTER YOUR HOSPITAL DISCHARGE,
34 WHICHEVER IS LATER, OR 120 ~~60~~ DAYS AFTER YOUR LAST MEDICAL

1 TREATMENT IN RELATION TO HEALTH CARE SERVICES NOT RENDERED
2 DURING HOSPITALIZATION.

3 THIS AGREEMENT PROVIDES THAT ANY CLAIMS WHICH MAY ARISE OUT
4 OF YOUR HEALTH CARE WILL BE SUBMITTED TO A PANEL OF
5 ARBITRATORS, RATHER THAN TO A COURT FOR DETERMINATION. THIS
6 AGREEMENT REQUIRES ALL PARTIES SIGNING IT TO ABIDE BY THE
7 DECISION OF THE ARBITRATION PANEL."

8 (e) An ~~an~~ executed copy of the AGREEMENT TO ARBITRATE
9 HEALTH CARE CLAIMS ~~and any reaffirmation of that agreement as~~
10 ~~required by this Act~~ shall be given to the patient or the
11 patient's legally authorized representative upon signing
12 ~~during the time of the discharge planning process or at the~~
13 ~~time of discharge.~~

14 (f) The changes to this Section made by this amendatory Act
15 of the 94th General Assembly apply to health care arbitration
16 agreements executed on or after its effective date.

17 (Source: P.A. 91-156, eff. 1-1-00.)

18 Section 330. The Code of Civil Procedure is amended by
19 reenacting and changing Sections 2-402, 2-622, and 8-2501, by
20 changing Sections 2-1704 and 8-1901, and by adding Sections
21 2-1105.01, 2-1704.5, and 2-1721 as follows:

22 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

23 (Text of Section WITHOUT the changes made by P.A. 89-7,
24 which has been held unconstitutional)

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

31 Persons or entities so named as respondents in discovery
32 shall be required to respond to discovery by the plaintiff in

1 the same manner as are defendants and may, on motion of the
2 plaintiff, be added as defendants if the evidence discloses the
3 existence of probable cause for such action.

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

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

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

12 A person or entity named as a respondent in discovery in
13 any civil action may be made a defendant in the same action at
14 any time within 6 months after being named as a respondent in
15 discovery, even though the time during which an action may
16 otherwise be initiated against him or her may have expired
17 during such 6 month period. An extension from the original
18 6-month period for good cause may be granted only once for up
19 to 90 days for (i) withdrawal of plaintiff's counsel or (ii)
20 good cause. Notwithstanding the limitations in this Section,
21 the court may grant additional reasonable extensions from this
22 6-month period for a failure or refusal on the part of the
23 respondent to comply with timely filed discovery.

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

27 (Source: P.A. 86-483.)

28 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

29 (Text of Section WITHOUT the changes made by P.A. 89-7,
30 which has been held unconstitutional)

31 Sec. 2-622. Healing art malpractice.

32 (a) In any action, whether in tort, contract or otherwise,
33 in which the plaintiff seeks damages for injuries or death by

1 reason of medical, hospital, or other healing art malpractice,
2 the plaintiff's attorney or the plaintiff, if the plaintiff is
3 proceeding pro se, shall file an affidavit, attached to the
4 original and all copies of the complaint, declaring one of the
5 following:

6 1. That the affiant has consulted and reviewed the
7 facts of the case with a health professional who the
8 affiant reasonably believes: (i) is knowledgeable in the
9 relevant issues involved in the particular action; (ii)
10 practices or has practiced within the last 5 6 years or
11 teaches or has taught within the last 5 6 years in the same
12 area of health care or medicine that is at issue in the
13 particular action; and (iii) meets the expert witness
14 standards set forth in paragraphs (a) through (d) of
15 Section 8-2501; is qualified by experience or demonstrated
16 competence in the subject of the case; that the reviewing
17 health professional has determined in a written report,
18 after a review of the medical record and other relevant
19 material involved in the particular action that there is a
20 reasonable and meritorious cause for the filing of such
21 action; and that the affiant has concluded on the basis of
22 the reviewing health professional's review and
23 consultation that there is a reasonable and meritorious
24 cause for filing of such action. A single written report
25 must be filed to cover each defendant in the action. As to
26 defendants who are individuals, the ~~If the affidavit is~~
27 ~~filed as to a defendant who is a physician licensed to~~
28 ~~treat human ailments without the use of drugs or medicines~~
29 ~~and without operative surgery, a dentist, a podiatrist, a~~
30 ~~psychologist, or a naprapath,~~ The written report must be
31 from a health professional licensed in the same profession,
32 with the same class of license, as the defendant. For
33 written reports ~~affidavits~~ filed as to all other
34 defendants, who are not individuals, the written report

1 must be from a physician licensed to practice medicine in
2 all its branches who is qualified by experience with the
3 standard of care, methods, procedures and treatments
4 relevant to the allegations at issue in the case. In either
5 event, the written report ~~affidavit~~ must identify the
6 profession of the reviewing health professional. A copy of
7 the written report, clearly identifying the plaintiff and
8 the reasons for the reviewing health professional's
9 determination that a reasonable and meritorious cause for
10 the filing of the action exists, must be attached to the
11 affidavit, but information which would identify the
12 reviewing health professional may be deleted from the copy
13 so attached. The report must contain the affirmations set
14 forth in items (i) through (iii) of this paragraph 1. At
15 the first Supreme Court Rule 218 case management
16 conference, the plaintiff shall present to the court the
17 original signed health professional's report, along with
18 the health professional's current license number and state
19 of licensure and curriculum vitae, for an in camera
20 inspection. The court shall verify whether the report and
21 affidavit comply with the requirements of this paragraph 1.
22 The court, in verifying whether the report and affidavit
23 comply with the requirements of this paragraph 1, shall
24 determine whether the health professional preparing the
25 report is qualified and the determination shall be either
26 in writing or transcribed. If the court finds that the
27 report, the health professional's current license
28 information or curriculum vitae, or the affidavit is
29 deficient, the court may request from the plaintiff all
30 documents it deems necessary to make its decision and shall
31 allow for a reasonable opportunity to provide any requested
32 documents and to amend that report or affidavit; provided,
33 if the statute of limitations has tolled, the judge may
34 grant only one extension not exceeding 120 days. The

1 court's verification as to whether the health professional
2 preparing the report is qualified shall be issued to all
3 parties and be made a part of the official record. The
4 original report, the health professional's current license
5 number and state of licensure and curriculum vitae, and any
6 documents requested by the court shall remain under seal
7 and part of the court record. Notwithstanding the other
8 provisions of this Section, the judge may disclose the name
9 and address of the reviewing health professional upon a
10 showing of good cause by the defendant who in good faith
11 challenges the qualifications of the health professional
12 based on information available to the defendant. If the
13 information is disclosed at the trial level, then it shall
14 be confidential and it shall not be disclosed by the
15 defendant to a third party.

16 2. That the affiant was unable to obtain a consultation
17 required by paragraph 1 because a statute of limitations
18 would impair the action and the consultation required could
19 not be obtained before the expiration of the statute of
20 limitations. If an affidavit is executed pursuant to this
21 paragraph, the affidavit ~~certificate~~ and written report
22 required by paragraph 1 shall be filed within 90 days after
23 the filing of the complaint. No additional 90-day
24 extensions pursuant to this paragraph shall be granted,
25 except where there has been a withdrawal of the plaintiff's
26 counsel. The defendant shall be excused from answering or
27 otherwise pleading until 30 days after being served with an
28 affidavit and a report ~~a certificate~~ required by paragraph
29 1.

30 3. That a request has been made by the plaintiff or his
31 attorney for examination and copying of records pursuant to
32 Part 20 of Article VIII of this Code and the party required
33 to comply under those Sections has failed to produce such
34 records within 60 days of the receipt of the request. If an

1 affidavit is executed pursuant to this paragraph, the
2 affidavit ~~certificate~~ and written report required by
3 paragraph 1 shall be filed within 90 days following receipt
4 of the requested records. All defendants except those whose
5 failure to comply with Part 20 of Article VIII of this Code
6 is the basis for an affidavit under this paragraph shall be
7 excused from answering or otherwise pleading until 30 days
8 after being served with the affidavit and report
9 ~~certificate~~ required by paragraph 1.

10 (b) Where an affidavit ~~a certificate~~ and written report are
11 required pursuant to this Section a separate affidavit
12 ~~certificate~~ and written report shall be filed as to each
13 defendant who has been named in the complaint and shall be
14 filed as to each defendant named at a later time.

15 (c) Where the plaintiff intends to rely on the doctrine of
16 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
17 the affidavit ~~certificate~~ and written report must state that,
18 in the opinion of the reviewing health professional, negligence
19 has occurred in the course of medical treatment. The affiant
20 shall certify upon filing of the complaint that he is relying
21 on the doctrine of "res ipsa loquitur".

22 (d) When the attorney intends to rely on the doctrine of
23 failure to inform of the consequences of the procedure, the
24 attorney shall certify upon the filing of the complaint that
25 the reviewing health professional has, after reviewing the
26 medical record and other relevant materials involved in the
27 particular action, concluded that a reasonable health
28 professional would have informed the patient of the
29 consequences of the procedure.

30 (e) Allegations and denials in the affidavit, made without
31 reasonable cause and found to be untrue, shall subject the
32 party pleading them or his attorney, or both, to the payment of
33 reasonable expenses, actually incurred by the other party by
34 reason of the untrue pleading, together with reasonable

1 attorneys' fees to be summarily taxed by the court upon motion
2 made within 30 days of the judgment or dismissal. In no event
3 shall the award for attorneys' fees and expenses exceed those
4 actually paid by the moving party, including the insurer, if
5 any. In proceedings under this paragraph (e), the moving party
6 shall have the right to depose and examine any and all
7 reviewing health professionals who prepared reports used in
8 conjunction with an affidavit required by this Section.

9 (f) A reviewing health professional who in good faith
10 prepares a report used in conjunction with an affidavit
11 required by this Section shall have civil immunity from
12 liability which otherwise might result from the preparation of
13 such report.

14 (g) The failure of the plaintiff to file an affidavit and
15 report in compliance with ~~to file a certificate required by~~
16 this Section shall be grounds for dismissal under Section
17 2-619.

18 (h) This Section does not apply to or affect any actions
19 pending at the time of its effective date, but applies to cases
20 filed on or after its effective date.

21 (i) This amendatory Act of 1997 does not apply to or
22 affect any actions pending at the time of its effective date,
23 but applies to cases filed on or after its effective date.

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

27 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)

28 (735 ILCS 5/2-1105.01 new)

29 Sec. 2-1105.01. Physician Personal Assets Protected.

30 (a) In a medical malpractice action as defined in Section
31 2-1704, a physician's personal assets may not be used to
32 satisfy a judgment against the physician if:

33 (1) the physician has a policy of liability insurance

1 of at least \$1,000,000 of coverage available to satisfy the
2 judgment against him or her in the case;

3 (2) before trial, the physician signs and provides a
4 sworn affidavit to the plaintiff and the physician's
5 insurer stating the following:

6 (A) the plaintiff has made a demand to settle the
7 case against the physician within the physician's
8 insurance policy limits (and the written demand is
9 attached to the affidavit);

10 (B) the physician has made a written demand to the
11 physician's insurer that the insurer settle the case
12 within the physician's insurance policy limits (and
13 the written demand is attached to the affidavit);

14 (C) the insurer for the physician has not settled
15 the case within the physician's insurance policy
16 limits pursuant to the written demand of the physician;
17 and

18 (D) the physician agrees to assign to the
19 plaintiff, after verdict, any and all causes of action
20 the physician may have against the physician's insurer
21 to prosecute a cause of action against that insurer for
22 acting in bad faith or vexatiously and without
23 reasonable cause by failing to settle the case within
24 the physician's insurance policy limits; and

25 (3) after a verdict in excess of the physician's
26 insurance policy limits, the physician has not withdrawn
27 the demand to settle in subdivision (2)(B) and assigns to
28 the plaintiff, pursuant to subdivision (2)(D), any and all
29 causes of action the physician has against the physician's
30 insurer for acting in bad faith or vexatiously and without
31 reasonable cause by failing to settle the case within the
32 physician's insurance policy limits.

33 (b) In a medical malpractice action as defined in Section
34 2-1704, if a physician does not make a written demand to settle

1 in accordance with subdivision (2)(B) of subsection (a), the
2 physician's personal assets may not be used to satisfy a
3 judgment against the physician if:

4 (1) the physician meets the insurance requirements of
5 paragraph (1) of subsection (a); and

6 (2) after the verdict, the court determines that the
7 physician's decision not to make the written demand was
8 reasonable. Such a determination may be made only in
9 accordance with the following procedure:

10 (A) The physician must file a motion, within 10
11 days after the verdict, for the exemption of the
12 physician's assets.

13 (B) The parties shall have 60 days after the motion
14 is filed to conduct discovery as to whether the
15 physician's decision not to make the written demand was
16 reasonable.

17 (C) Upon completion of the discovery period and any
18 additional time granted to the parties by the court for
19 submissions in support of or opposition to the the
20 motion, the court shall hold an evidentiary hearing, if
21 necessary, and determine whether the physician's
22 decision not to make the written demand was reasonable.

23 During the pendency of a motion filed by a physician under
24 this subsection (b) for the exemption of the physician's
25 assets, the enforcement of the judgment against the physician
26 shall be stayed, but the physician shall be prohibited from
27 transferring, concealing, or dissipating his or her assets. The
28 physician shall not be required to post a bond or other form of
29 security during the pendency of the motion.

30 The granting of a motion under this subsection (b) shall be
31 conditioned upon the physician's assignment to the plaintiff,
32 pursuant to subdivision (2)(D) of subsection (a), of any and
33 all causes of action the physician has against the physician's
34 insurer for acting in bad faith or vexatiously and without

1 reasonable cause by failing to settle the case within the
2 physician's insurance policy limits.

3 If the court denies a motion filed by a physician under
4 this subsection (b) and determines that the physician's
5 decision not to make a written demand was not reasonable, the
6 physician may appeal the denial of the motion after a final
7 judgment is entered in the case. Any appeal shall be the rules
8 that apply to civil appeals, including Supreme Court Rule 305
9 regarding stays of enforcement of money judgments.

10 (c) This Section applies only to an individual physician
11 who satisfies the requirements of subsection (a) or (b) and
12 does not apply to any actual or alleged principal, apparent
13 principal, employer, master, or partner of the physician, or
14 any other party in the case.

15 (d) This Section does not restrict, impair, or otherwise
16 affect the amount of damages which may be awarded to the
17 plaintiff or the amount of any judgment in favor of the
18 plaintiff.

19 (e) This Section does not restrict, impair, or otherwise
20 affect the statutory and common law causes of action a
21 physician or his or her assignee has against the physician's
22 insurer for the insurer's acting in bad faith or vexatiously
23 and without reasonable cause by failing to settle a case
24 against the physician within the physician's insurance policy
25 limits.

26 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

27 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~
28 ~~Action~~. As used in this Code Part, "healing art medical
29 malpractice action" means any action, whether in tort, contract
30 or otherwise, in which the plaintiff seeks damages for injuries
31 or death by reason of medical, hospital, or other healing art
32 malpractice including but not limited to medical, hospital,
33 nursing, dental, or podiatric malpractice. The term "healing

1 art" shall not include care and treatment by spiritual means
2 through prayer in accord with the tenets and practices of a
3 recognized church or religious denomination.

4 (Source: P.A. 84-7.)

5 (735 ILCS 5/2-1704.5 new)

6 Sec. 2-1704.5. Guaranteed payment of future economic loss.

7 (a) Either party in a medical malpractice action may elect
8 to have the payment of the plaintiff's future economic loss
9 determined under this Section. The election must be made not
10 less than 60 days before commencement of a trial involving
11 issues of damages for such future economic loss. If a
12 settlement is reached or if the defendant is found liable for
13 damages for a plaintiff's future economic loss in excess of
14 \$1,000,000, the defendant shall compensate the plaintiff for
15 such loss by purchasing an annuity as described in this Section
16 that will pay for the loss.

17 (b) If a defendant in a medical malpractice action is found
18 liable for the plaintiff's future medical expenses and costs of
19 care, the trier of fact shall make the following findings based
20 on evidence presented at trial:

21 (1) the plaintiff's future economic loss; and

22 (2) plaintiff's pain and suffering.

23 (c) When an election is made to pay for future economic
24 loss by purchasing an annuity, the court shall enter a judgment
25 ordering that such future losses be paid by placing moneys in a
26 trust fund for the purchase of an annuity by or on behalf of
27 the defendant from a company that has itself, or is irrevocably
28 supported financially by a company that has, at least 2 of the
29 following 4 ratings: "A+ X" or higher from A.M. Best Company;
30 "AA-" or higher from Standard & Poor's; "Aa3" or higher from
31 Moody's; and "AA-" or higher from Fitch. The annuity must be
32 for the life of the plaintiff.

33 (d) If the company providing the annuity becomes unable to

1 pay amounts required by the annuity, the defendant shall be
2 responsible for payments to the plaintiff. If neither the
3 company providing the annuity nor the defendant is able pay
4 amounts due the plaintiff, the State shall make the payments.

5 (e) In determining contingent attorney's fees under
6 Section 2-1114 of this Code, the sum recovered shall be
7 determined on the basis of the economic loss found by the trier
8 of fact under subsection (b).

9 (f) This Section applies to the purchase of an annuity
10 providing for the payment of future economic loss in accordance
11 with the settlement of a medical malpractice claim if the
12 specific terms of the annuity are agreed to by all parties to
13 the settlement.

14 (735 ILCS 5/2-1721 new)

15 Sec. 2-1721. Hospitals; apparent or ostensible agency.

16 (a) A hospital shall not be liable for the conduct of a
17 non-employee member of its medical staff under any claim based
18 upon apparent or ostensible agency as a matter of law,
19 provided:

20 (1) the patient was unconscious or unaware of his or
21 her surroundings upon arrival at the hospital and the
22 patient's legal representative was not present at the time
23 to be informed that the non-employee member of its medical
24 staff was not an agent or employee of the hospital; or

25 (2) the specific member of the hospital's medical staff
26 personally informed the patient, or his or her legal
27 representative, if present, before rendering treatment
28 that he or she was not an agent or employee of the
29 hospital.

30 (b) A hospital shall not be liable for the conduct of a
31 non-employee member of its medical staff under any claim based
32 upon apparent or ostensible agency, provided:

33 (1) the following disclosure is provided to the patient

1 prior to the provision of the care in question in a
2 separate document, complete in itself and not part of any
3 other contract or instrument, which shall contain in upper
4 case type in printed letters of at least 3/16 inch height a
5 caption and statement as follows:

6 "NOTICE OF STATUS OF TREATING PHYSICIANS

7 SOME PHYSICIANS WHO WILL TREAT YOU AT THIS HOSPITAL MAY NOT
8 BE EMPLOYEES OF THE HOSPITAL AND THE HOSPITAL IS NOT
9 RESPONSIBLE FOR ANY CONDUCT OF ANY NON-EMPLOYEE PHYSICIANS
10 ON THE BASIS THAT THEY ARE HOSPITAL AGENTS OR EMPLOYEES";

11 and

12 (2) if the patient is asked to sign the disclosure, the
13 disclosure shall contain immediately above the signature
14 lines, in upper case bold type printed letters of at least
15 3/16 inch height, a statement that the patient cannot be
16 required to sign the disclosure in order to receive
17 treatment; and

18 (3) the patient was not required to sign the disclosure
19 in order to receive treatment; and

20 (4) such disclosure is provided in a reasonable and
21 meaningful manner. In determining if a disclosure
22 satisfies the requirements of this item (4), the trier of
23 fact shall consider only the following factors:

24 (A) Whether the patient knowingly and voluntarily
25 signed the disclosure.

26 (B) Whether the hospital provided an opportunity
27 for the patient to ask questions.

28 (C) Whether the patient's questions about this
29 disclosure were answered and the contents of the
30 answers.

31 (D) Whether such disclosure was provided orally
32 and in writing.

1 (E) Whether a reasonable person under the
2 circumstances should have understood the disclosure,
3 taking into account any and all representations made by
4 or on behalf of the hospital.

5 As used in this subsection (b), "patient" refers to the
6 patient or any legal representative of the patient.

7 (c) Nothing in this Section shall be construed as imposing
8 an obligation on a hospital to provide any particular health
9 care service, treatment, or procedure to a patient.

10 (d) Nothing in this Section precludes any other defense to
11 a claim of apparent or ostensible agency.

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

15 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

16 Sec. 8-1901. Admission of liability - Effect.

17 (a) The providing of, or payment for, medical, surgical,
18 hospital, or rehabilitation services, facilities, or equipment
19 by or on behalf of any person, or the offer to provide, or pay
20 for, any one or more of the foregoing, shall not be construed
21 as an admission of any liability by such person or persons.
22 Testimony, writings, records, reports or information with
23 respect to the foregoing shall not be admissible in evidence as
24 an admission of any liability in any action of any kind in any
25 court or before any commission, administrative agency, or other
26 tribunal in this State, except at the instance of the person or
27 persons so making any such provision, payment or offer.

28 (b) Any expression of grief, apology, or explanation
29 provided by a health care provider, including, but not limited
30 to, a statement that the health care provider is "sorry" for
31 the outcome to a patient, the patient's family, or the
32 patient's legal representative about an inadequate or
33 unanticipated treatment or care outcome that is provided within

1 72 hours of when the provider knew or should have known of the
2 potential cause of such outcome shall not be admissible as
3 evidence in any action of any kind in any court or before any
4 tribunal, board, agency, or person. The disclosure of any such
5 information, whether proper, or improper, shall not waive or
6 have any effect upon its confidentiality or inadmissibility. As
7 used in this Section, a "health care provider" is any hospital,
8 nursing home or other facility, or employee or agent thereof, a
9 physician, or other licensed health care professional. Nothing
10 in this Section precludes the discovery or admissibility of any
11 other facts regarding the patient's treatment or outcome as
12 otherwise permitted by law.

13 (Source: P.A. 82-280.)

14 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

15 (Text of Section WITHOUT the changes made by P.A. 89-7,
16 which has been held unconstitutional)

17 Sec. 8-2501. Expert Witness Standards. In any case in which
18 the standard of care applicable to ~~given by~~ a medical
19 professional ~~profession~~ is at issue, the court shall apply the
20 following standards to determine if a witness qualifies as an
21 expert witness and can testify on the issue of the appropriate
22 standard of care.

23 (a) Whether the witness is board certified or board
24 eligible, or has completed a residency, in the same or
25 substantially similar medical specialties as the defendant and
26 is otherwise qualified by significant experience with the
27 standard of care, methods, procedures, and treatments relevant
28 to the allegations against the defendant ~~Relationship of the~~
29 ~~medical specialties of the witness to the medical problem or~~
30 ~~problems and the type of treatment administered in the case;~~

31 (b) Whether the witness has devoted a majority ~~substantial~~
32 ~~portion~~ of his or her work time to the practice of medicine,
33 teaching or University based research in relation to the

1 medical care and type of treatment at issue which gave rise to
2 the medical problem of which the plaintiff complains;

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

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

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

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

20 (Source: P.A. 84-7.)

21 Section 340. The Good Samaritan Act is amended by changing
22 Section 30 as follows:

23 (745 ILCS 49/30)

24 Sec. 30. Free medical clinic; exemption from civil
25 liability for services performed without compensation.

26 (a) A person licensed under the Medical Practice Act of
27 1987, a person licensed to practice the treatment of human
28 ailments in any other state or territory of the United States,
29 or a health care professional, including but not limited to an
30 advanced practice nurse, retired physician, physician
31 assistant, nurse, pharmacist, physical therapist, podiatrist,
32 or social worker licensed in this State or any other state or

1 territory of the United States, who, in good faith, provides
2 medical treatment, diagnosis, or advice as a part of the
3 services of an established free medical clinic providing care,
4 including but not limited to home visits, without charge to
5 ~~medically indigent~~ patients which is limited to care that does
6 not require the services of a licensed hospital or ambulatory
7 surgical treatment center and who receives no fee or
8 compensation from that source shall not be liable for civil
9 damages as a result of his or her acts or omissions in
10 providing that medical treatment, except for willful or wanton
11 misconduct.

12 (b) For purposes of this Section, a "free medical clinic"
13 is an organized community based program providing medical care
14 without charge to individuals ~~unable to pay for it~~, at which
15 the care provided does not include ~~the use of general~~
16 ~~anesthesia or require~~ an overnight stay in a health-care
17 facility.

18 (c) The provisions of subsection (a) of this Section do not
19 apply to a particular case unless the free medical clinic has
20 posted in a conspicuous place on its premises an explanation of
21 the exemption from civil liability provided herein.

22 (d) The immunity from civil damages provided under
23 subsection (a) also applies to physicians, retired physicians,
24 hospitals, and other health care providers that provide further
25 medical treatment, diagnosis, or advice, including but not
26 limited to hospitalization, office visits, and home visits, to
27 a patient upon referral from an established free medical clinic
28 without fee or compensation.

29 (d-5) A free medical clinic may receive reimbursement from
30 the Illinois Department of Public Aid, provided any
31 reimbursements shall be used only to pay overhead expenses of
32 operating the free medical clinic and may not be used, in whole
33 or in part, to provide a fee or other compensation to any
34 person licensed under the Medical Practice Act of 1987 or any

1 other health care professional who is receiving an exemption
2 under this Section. Any health care professional receiving an
3 exemption under this Section may not receive any fee or other
4 compensation in connection with any services provided to, or
5 any ownership interest in, the clinic. Medical care shall not
6 include an overnight stay in a health care facility.

7 (e) Nothing in this Section prohibits a free medical clinic
8 from accepting voluntary contributions for medical services
9 provided to a patient who has acknowledged his or her ability
10 and willingness to pay a portion of the value of the medical
11 services provided.

12 (f) Any voluntary contribution collected for providing
13 care at a free medical clinic shall be used only to pay
14 overhead expenses of operating the clinic. No portion of any
15 moneys collected shall be used to provide a fee or other
16 compensation to any person licensed under Medical Practice Act
17 of 1987.

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

21 (Source: P.A. 89-607, eff. 1-1-97; 90-742, eff. 8-13-98.)

22 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

23 Section 401. Short title. This Article 4 may be cited as
24 the Sorry Works! Pilot Program Act, and references in this
25 Article to "this Act" mean this Article.

26 Section 405. Sorry Works! pilot program. The Sorry Works!
27 pilot program is established. During the first year of the
28 program's operation, participation in the program shall be open
29 to one hospital. Hospitals may participate only with the
30 approval of the hospital administration and the hospital's
31 organized medical staff. During the second year of the

1 program's operation, participation in the program shall be open
2 to one additional hospital.

3 The first participating hospital selected by the committee
4 established under Section 410 shall be located in a county with
5 a population greater than 200,000 that is contiguous with the
6 Mississippi River.

7 Under the program, participating hospitals and physicians
8 shall promptly acknowledge and apologize for mistakes in
9 patient care and promptly offer fair settlements.
10 Participating hospitals shall encourage patients and families
11 to retain their own legal counsel to ensure that their rights
12 are protected and to help facilitate negotiations for fair
13 settlements. Participating hospitals shall report to the
14 committee their total costs for healing art malpractice
15 verdicts, settlements, and defense litigation for the
16 preceding 5 years to enable the committee to determine average
17 costs for that hospital during that period. The committee shall
18 develop standards and protocols to compare costs for cases
19 handled by traditional means and cases handled under the Sorry
20 Works! protocol.

21 If the committee determines that the total costs of cases
22 handled under the Sorry Works! protocol by a hospital
23 participating in the program exceed the total costs that would
24 have been incurred if the cases had been handled by traditional
25 means, the hospital may apply for a grant from the Sorry Works!
26 Fund, a special fund that is created in the State Treasury, for
27 an amount, as determined by the committee, by which the total
28 costs exceed the total costs that would have been incurred if
29 the cases had been handled by traditional means; however, the
30 total of all grants from the Fund for cases in any single
31 participating hospital in any year may not exceed the amount in
32 the Fund or \$2,000,000, whichever is less. All grants shall be
33 subject to appropriation. Moneys in the Fund shall consist of
34 funds transferred into the Fund or otherwise made available

1 from any source.

2 Section 410. Establishment of committee.

3 (a) A committee is established to develop, oversee, and
4 implement the Sorry Works! pilot program. The committee shall
5 have 9 members, each of whom shall be a voting member. Six
6 members of the committee shall constitute a quorum. The
7 committee shall be comprised as follows:

8 (1) The President of the Senate, the Minority Leader of
9 the Senate, the Speaker of the House of Representatives,
10 and the Minority Leader of the House of Representatives
11 shall each appoint 2 members.

12 (2) The Secretary of Financial and Professional
13 Regulation or his or her designee.

14 (b) The committee shall establish criteria for the program,
15 including but not limited to: selection of hospitals,
16 physicians, and insurers to participate in the program; and
17 creation of a subcommittee to review cases from hospitals and
18 determine whether hospitals, physicians, and insurers are
19 entitled to compensation under the program.

20 (c) The committee shall communicate with hospitals,
21 physicians, and insurers that are interested in participating
22 in the program. The committee shall make final decisions as to
23 which applicants are accepted for the program.

24 (d) The committee shall report to the Governor and the
25 General Assembly annually.

26 (e) The committee shall publish data regarding the program.

27 (f) Committee members shall receive no compensation for the
28 performance of their duties as members, but each member shall
29 be paid necessary expenses while engaged in the performance of
30 those duties.

31 Section 415. Termination of program.

32 (a) The program may be terminated at any time if the

1 committee, by a vote of two-thirds of its members, votes to
2 terminate the program.

3 (b) If the program is not terminated under subsection (a),
4 the program shall terminate after its second year of operation.

5 Section 495. The State Finance Act is amended by adding
6 Section 5.640 as follows:

7 (30 ILCS 105/5.640 new)

8 Sec. 5.640. The Sorry Works! Fund.

9 ARTICLE 5. WORKING STUDY COMMITTEE

10 Section 501. Short title. This Article 5 may be cited as
11 the Medical Malpractice Working Study Committee Act, and
12 references in this Article to "this Act" mean this Article.

13 Section 505. Working Study Committee. The Governor,
14 President of the Senate, Senate Minority Leader, Speaker of the
15 House of Representatives, and House Minority Leader shall each
16 appoint 2 persons to serve on a Working Study Committee to
17 research, assess, and report to the General Assembly on the
18 results and impacts of other states' efforts in addressing caps
19 on non-economic damages to pay judgments or settlements in
20 medical malpractice lawsuits. The Working Study Committee
21 shall submit its report within 12 months of the effective date
22 of this Act.

23 ARTICLE 9. MISCELLANEOUS

24 Section 995. Severability. The provisions of this Act are
25 severable under Section 1.31 of the Statute on Statutes.

26 Section 999. Effective date. This Act takes effect upon

1 becoming law.".