



Sen. Michael Connelly

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LRB099 05349 HLH 34105 a

1 AMENDMENT TO SENATE BILL 1102

2 AMENDMENT NO. _____. Amend Senate Bill 1102 by replacing
3 everything after the enacting clause with the following:

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

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

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

9 (a) In the event that any civil proceeding is commenced
10 against any State employee arising out of any act or omission
11 occurring within the scope of the employee's State employment,
12 the Attorney General shall, upon timely and appropriate notice
13 to him by such employee, appear on behalf of such employee and
14 defend the action. In the event that any civil proceeding is
15 commenced against any physician who is an employee of the
16 Department of Corrections or the Department of Human Services

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

1 be mailed within 15 days after the date of receipt by the
2 employee of service of process, and shall authorize the
3 Attorney General to represent and defend the employee in the
4 proceeding. The giving of this notice to the Attorney General
5 shall constitute an agreement by the State employee to
6 cooperate with the Attorney General in his defense of the
7 action and a consent that the Attorney General shall conduct
8 the defense as he deems advisable and in the best interests of
9 the employee, including settlement in the Attorney General's
10 discretion. In any such proceeding, the State shall pay the
11 court costs and litigation expenses of defending such action,
12 to the extent approved by the Attorney General as reasonable,
13 as they are incurred.

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

1 attorneys' fees to the extent approved by the Attorney General
2 as reasonable, as they are incurred. In the event that the
3 Attorney General declines to appear or withdraws on the grounds
4 that the act or omission was not within the scope of
5 employment, or was intentional, wilful or wanton misconduct,
6 and a court or jury finds that the act or omission of the State
7 employee was within the scope of employment and was not
8 intentional, wilful or wanton misconduct, the State shall
9 indemnify the State employee for any damages awarded and court
10 costs and attorneys' fees assessed as part of any final and
11 unreversed judgment. In such event the State shall also pay the
12 employee's court costs, litigation expenses and attorneys'
13 fees to the extent approved by the Attorney General as
14 reasonable.

15 In the event that the defendant in the proceeding is an
16 elected State official, including members of the General
17 Assembly, the elected State official may retain his or her
18 attorney, provided that said attorney shall be reasonably
19 acceptable to the Attorney General. In such case the State
20 shall pay the elected State official's court costs, litigation
21 expenses, and attorneys' fees, to the extent approved by the
22 Attorney General as reasonable, as they are incurred.

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

25 (1) the Attorney General determines that the State
26 employee is entitled to representation in a civil action

1 under this Section;

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

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

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

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

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

1 and expenses covered by this Section.

2 (ii) Upon entry of a final judgment against the employee,
3 or upon the settlement of the claim, the employee shall cause
4 to be served a copy of such judgment or settlement, personally
5 or by certified or registered mail within thirty days of the
6 date of entry or settlement, upon the chief administrative
7 officer of the department, office or agency in which he is
8 employed. If not inconsistent with the provisions of this
9 Section, such judgment or settlement shall be certified for
10 payment by such chief administrative officer and by the
11 Attorney General. The judgment or settlement shall be paid from
12 the State Treasury on the warrant of the Comptroller out of
13 appropriations made to the Department of Central Management
14 Services specifically designed for the payment of claims
15 covered by this Section.

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

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

21 (h) This Section shall not apply to claims for bodily
22 injury or damage to property arising from motor vehicle
23 accidents.

24 (i) This Section shall apply to all proceedings filed on or
25 after its effective date, and to any proceeding pending on its
26 effective date, if the State employee gives notice to the

1 Attorney General as provided in this Section within 30 days of
2 the Act's effective date.

3 (j) The amendatory changes made to this Section by this
4 amendatory Act of 1986 shall apply to all proceedings filed on
5 or after the effective date of this amendatory Act of 1986 and
6 to any proceeding pending on its effective date, if the State
7 employee gives notice to the Attorney General as provided in
8 this Section within 30 days of the effective date of this
9 amendatory Act of 1986.

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

15 (l) The State shall not provide representation for, nor
16 shall it indemnify, any State employee in any criminal
17 proceeding arising out of that employee's State employment.
18 Nothing in this Act shall be construed to authorize the State
19 to represent or indemnify State employees in criminal matters.

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

21 Section 10. The Local Governmental and Governmental
22 Employees Tort Immunity Act is amended by changing Section
23 2-302 as follows:

24 (745 ILCS 10/2-302) (from Ch. 85, par. 2-302)

1 Sec. 2-302. If any claim or action is instituted against an
2 employee of a local public entity based on an injury allegedly
3 arising out of an act or omission occurring within the scope of
4 his employment as such employee, the entity may elect to do any
5 one or more of the following:

6 (a) appear and defend against the claim or action;

7 (b) indemnify the employee or former employee for his
8 court costs or reasonable attorney's fees, or both,
9 incurred in the defense of such claim or action;

10 (c) pay, or indemnify the employee or former employee
11 for a judgment based on such claim or action; or

12 (d) pay, or indemnify the employee or former employee
13 for, a compromise or settlement of such a claim or action.

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

18 No local public entity shall provide representation for,
19 nor shall it indemnify, any employee of that local public
20 entity in any criminal proceeding arising out of that
21 employee's employment with the local government entity.
22 Nothing in this Act shall be construed to authorize local
23 public entities to represent or indemnify their employees in
24 criminal matters.

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