

1 AN ACT concerning State employees.

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

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

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

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

9 (a) In the event that any civil proceeding is commenced
10 against any State employee arising out of any act or omission
11 occurring within the scope of the employee's State
12 employment, the Attorney General shall, upon timely and
13 appropriate notice to him by such employee, appear on behalf
14 of such employee and defend the action. In the event that
15 any civil proceeding is commenced against any physician who
16 is an employee of the Department of Corrections or the
17 Department of Human Services (in a position relating to the
18 Department's mental health and developmental disabilities
19 functions) alleging death or bodily injury or other injury to
20 the person of the complainant resulting from and arising out
21 of any act or omission occurring on or after December 3, 1977
22 within the scope of the employee's State employment, or
23 against any physician who is an employee of the Department of
24 Veterans' Affairs alleging death or bodily injury or other
25 injury to the person of the complainant resulting from and
26 arising out of any act or omission occurring on or after the
27 effective date of this amendatory Act of 1988 within the
28 scope of the employee's State employment, or in the event
29 that any civil proceeding is commenced against any attorney
30 who is an employee of the State Appellate Defender alleging
31 legal malpractice or for other damages resulting from and

1 arising out of any legal act or omission occurring on or
2 after December 3, 1977, within the scope of the employee's
3 State employment, or in the event that any civil proceeding
4 is commenced against any individual or organization who
5 contracts with the Department of Labor to provide services as
6 a carnival and amusement ride safety inspector alleging
7 malpractice, death or bodily injury or other injury to the
8 person arising out of any act or omission occurring on or
9 after May 1, 1985, within the scope of that employee's State
10 employment, the Attorney General shall, upon timely and
11 appropriate notice to him by such employee, appear on behalf
12 of such employee and defend the action. Any such notice
13 shall be in writing, shall be mailed within 15 days after the
14 date of receipt by the employee of service of process, and
15 shall authorize the Attorney General to represent and defend
16 the employee in the proceeding. The giving of this notice to
17 the Attorney General shall constitute an agreement by the
18 State employee to cooperate with the Attorney General in his
19 defense of the action and a consent that the Attorney General
20 shall conduct the defense as he deems advisable and in the
21 best interests of the employee, including settlement in the
22 Attorney General's discretion. In any such proceeding, the
23 State shall pay the court costs and litigation expenses of
24 defending such action, to the extent approved by the Attorney
25 General as reasonable, as they are incurred.

26 (b) In the event that the Attorney General determines
27 that so appearing and defending an employee either (1)
28 involves an actual or potential conflict of interest, or (2)
29 that the act or omission which gave rise to the claim was not
30 within the scope of the employee's State employment or was
31 intentional, wilful or wanton misconduct, the Attorney
32 General shall decline in writing to appear or defend or shall
33 promptly take appropriate action to withdraw as attorney for
34 such employee. Upon receipt of such declination or upon such

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

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

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

30 (1) the Attorney General determines that the State
31 employee is entitled to representation in a civil action
32 under this Section;

33 (2) the counterclaim arises out of any act or
34 omission occurring within the scope of the employee's

1 State employment that is the subject of the civil action;
2 and

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

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

27 (d) In any such proceeding where notice in accordance
28 with this Section has been given to the Attorney General,
29 unless the court or jury finds that the conduct or inaction
30 which gave rise to the claim or cause of action was
31 intentional, wilful or wanton misconduct and was not intended
32 to serve or benefit interests of the State, the State shall
33 indemnify the State employee for any damages awarded and
34 court costs and attorneys' fees assessed as part of any final

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

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

21 (ii) Upon entry of a final judgment against the
22 employee, or upon the settlement of the claim, the employee
23 shall cause to be served a copy of such judgment or
24 settlement, personally or by certified or registered mail
25 within thirty days of the date of entry or settlement, upon
26 the chief administrative officer of the department, office or
27 agency in which he is employed. If not inconsistent with the
28 provisions of this Section, such judgment or settlement shall
29 be certified for payment by such chief administrative officer
30 and by the Attorney General. The judgment or settlement
31 shall be paid from the State Treasury on the warrant of the
32 Comptroller out of appropriations made to the Department of
33 Central Management Services specifically designed for the
34 payment of claims covered by this Section.

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

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

7 (h) This Section shall not apply to claims for bodily
8 injury or damage to property arising from motor vehicle
9 accidents.

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

15 (j) The amendatory changes made to this Section by this
16 amendatory Act of 1986 shall apply to all proceedings filed
17 on or after the effective date of this amendatory Act of 1986
18 and to any proceeding pending on its effective date, if the
19 State employee gives notice to the Attorney General as
20 provided in this Section within 30 days of the effective date
21 of this amendatory Act of 1986.

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

27 (l) Notwithstanding any other provision of this Section,
28 if a State official or employee has been defended by the
29 Attorney General or by counsel appointed by the Attorney
30 General and it is established by the judgment ultimately
31 rendered on the claim that the act or omission complained of
32 was not within the State official's or employee's scope of
33 employment or that the act or omission complained of was the
34 result of willful or wanton misconduct, the judgment against

1 that State official or employee shall provide for payment to
2 the State of the State's costs, including, but not limited
3 to, all attorney's fees and court costs.

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

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