

HB0994



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB0994

Introduced 1/12/2023, by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

5 ILCS 350/2

from Ch. 127, par. 1302

Amends the State Employee Indemnification Act. Deletes provisions that allowed the Attorney General to decline to appear and defend an employee when the act or omission that gave rise to the claim was intentional, wilful, or wanton conduct. Makes conforming changes.

LRB103 04811 DTM 49821 b

A BILL FOR

1 AN ACT concerning government.

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

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

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

7 (Text of Section before amendment by P.A. 102-982)

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

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

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

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

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

1 employee was within the scope of employment and was not
2 intentional, wilful or wanton misconduct, the State shall
3 indemnify the State employee for any damages awarded and court
4 costs and attorneys' fees assessed as part of any final and
5 unreversed judgment. In such event the State shall also pay
6 the employee's court costs, litigation expenses and attorneys'
7 fees to the extent approved by the Attorney General as
8 reasonable.

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

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

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

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

25 (3) the employee agrees in writing that if judgment is
26 entered in favor of the employee, the amount of the

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

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

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

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

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

24 (ii) Upon entry of a final judgment against the employee,
25 or upon the settlement of the claim, the employee shall cause
26 to be served a copy of such judgment or settlement, personally

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

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

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

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

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

26 (j) The amendatory changes made to this Section by this

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

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

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

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

21 (Text of Section after amendment by P.A. 102-982)

22 Sec. 2. Representation and indemnification of State
23 employees.

24 (a) In the event that any civil proceeding is commenced
25 against any State employee arising out of any act or omission

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

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

20 (b) In the event that the Attorney General determines that
21 so appearing and defending an employee either (1) involves an
22 actual or potential conflict of interest, or (2) that the act
23 or omission which gave rise to the claim was not within the
24 scope of the employee's State employment ~~or was intentional,~~
25 ~~wilful or wanton misconduct,~~ the Attorney General shall
26 decline in writing to appear or defend or shall promptly take

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

21 In the event that the defendant in the proceeding is an
22 elected State official, including members of the General
23 Assembly, the elected State official may retain his or her
24 attorney, provided that said attorney shall be reasonably
25 acceptable to the Attorney General. In such case the State
26 shall pay the elected State official's court costs, litigation

1 expenses, and attorneys' fees, to the extent approved by the
2 Attorney General as reasonable, as they are incurred.

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

5 (1) the Attorney General determines that the State
6 employee is entitled to representation in a civil action
7 under this Section;

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

11 (3) the employee agrees in writing that if judgment is
12 entered in favor of the employee, the amount of the
13 judgment shall be applied to offset any judgment that may
14 be entered in favor of the plaintiff, and then to
15 reimburse the State treasury for court costs and
16 litigation expenses required to pursue the counterclaim.
17 The balance of the collected judgment shall be paid to the
18 State employee.

19 (c) Notwithstanding any other provision of this Section,
20 representation and indemnification of a judge under this Act
21 shall also be provided in any case where the plaintiff seeks
22 damages or any equitable relief as a result of any decision,
23 ruling or order of a judge made in the course of his or her
24 judicial or administrative duties, without regard to the
25 theory of recovery employed by the plaintiff. Indemnification
26 shall be for all damages awarded and all court costs, attorney

1 fees and litigation expenses assessed against the judge. When
2 a judge has been convicted of a crime as a result of his or her
3 intentional judicial misconduct in a trial, that judge shall
4 not be entitled to indemnification and representation under
5 this subsection in any case maintained by a party who seeks
6 damages or other equitable relief as a direct result of the
7 judge's intentional judicial misconduct.

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

1 jurisdiction, which shall obligate the State to indemnify the
2 employee.

3 (e) (i) Court costs and litigation expenses and other
4 costs of providing a defense or counterclaim, including
5 attorneys' fees obligated under this Section, shall be paid
6 from the State Treasury on the warrant of the Comptroller out
7 of appropriations made to the Department of Central Management
8 Services specifically designed for the payment of costs, fees
9 and expenses covered by this Section.

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

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

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

4 (h) This Section shall not apply to claims for bodily
5 injury or damage to property arising from motor vehicle
6 crashes.

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

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

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

24 (l) The State shall not provide representation for, nor
25 shall it indemnify, any State employee in (i) any criminal
26 proceeding in which the employee is a defendant or (ii) any

1 criminal investigation in which the employee is the target.
2 Nothing in this Act shall be construed to prohibit the State
3 from providing representation to a State employee who is a
4 witness in a criminal matter arising out of that employee's
5 State employment.

6 (Source: P.A. 102-982, eff. 7-1-23.)

7 Section 95. No acceleration or delay. Where this Act makes
8 changes in a statute that is represented in this Act by text
9 that is not yet or no longer in effect (for example, a Section
10 represented by multiple versions), the use of that text does
11 not accelerate or delay the taking effect of (i) the changes
12 made by this Act or (ii) provisions derived from any other
13 Public Act.