



Sen. David Luechtefeld

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1 AMENDMENT TO HOUSE BILL 1191

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1191 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 Insurance. A risk retention trust must have and  
30 at all times maintain a pool retention fund or a line or letter  
31 of credit at least equal to its unpaid liabilities as  
32 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 Director 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 Director of Insurance the rates and rating

1 schedules it uses for medical liability insurance.

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

6 (2) For the purposes of this Section, any change in  
7 premium to the company's insureds as a result of a change  
8 in the company's base rates or a change in its increased  
9 limits factors shall constitute a change in rates and shall  
10 require a filing with the Director.

11 (3) It shall be certified in such filing by an officer  
12 of the company and a qualified actuary that the company's  
13 rates are based on sound actuarial principles and are not  
14 inconsistent with the company's experience.

15 (d) If, after an administrative a hearing pursuant to  
16 subsection (c) of Section 401 of this Code, the Director finds:

17 (1) that any rate, rating plan or rating system  
18 violates the provisions of this Section applicable to it,  
19 he shall ~~may~~ issue an order to the company which has been  
20 the subject of the hearing specifying in what respects such  
21 violation exists and may prohibit ~~stating when, within a~~  
22 ~~reasonable period of time,~~ the further use of such rate or  
23 rating system by such company in contracts of insurance  
24 ~~made thereafter shall be prohibited;~~

25 (2) that the violation of any of the provisions of this  
26 Section ~~applicable to it~~ by any company which has been the  
27 subject of the hearing was wilful or that any company has  
28 repeatedly violated any provision of this Section, he may  
29 take either or both of the following actions:

30 (A) Suspend ~~suspend~~ or revoke, in whole or in part,  
31 the certificate of authority of such company with  
32 respect to the class of insurance which has been the  
33 subject of the hearing.

34 (B) Impose a penalty of up to \$1,000 against the

1           company for each violation. Each day during which a  
2           violation occurs constitutes a separate violation.

3           (e) Every company writing medical liability insurance in  
4           this State shall offer to each of its medical liability  
5           insureds the option to make premium payments in at least  
6           quarterly installments as prescribed by and filed with the  
7           Director. This offer shall be included in the initial offer or  
8           in the first policy renewal occurring after the effective date  
9           of this amendatory Act of the 93rd General Assembly, but no  
10           earlier than January 1, 2005.

11           (f) Every company writing medical liability insurance is  
12           encouraged, but not required, to offer the opportunity for  
13           participation in a plan offering deductibles to its medical  
14           liability insureds. Any plan to offer deductibles shall be  
15           filed with the Department of Insurance.

16           (g) Medical liability insurers are encouraged, but not  
17           required, to offer the opportunity for participation in a plan  
18           providing premium discounts for participation in risk  
19           management activities to its medical liability insureds. Any  
20           such plan shall be filed with the Department.

21           (Source: P.A. 79-1434.)

22           (215 ILCS 5/155.18a new)

23           Sec. 155.18a. Professional Liability Insurance Resource  
24           Center. The Director of Insurance shall establish a  
25           Professional Liability Insurance Resource Center on the World  
26           Wide Web containing the names and telephone numbers of all  
27           licensed companies providing medical liability insurance and  
28           producers who sell medical liability insurance. Each company  
29           and producer shall submit the information to the Department on  
30           or before September 30 of each year in order to be listed on  
31           the website. The Department is under no obligation to list a  
32           company or producer on the website. Hyperlinks to company  
33           websites shall be included, if available. The publication of

1 the information on the Department's website shall commence on  
2 January 1, 2005. The Department shall update the information on  
3 the Professional Liability Insurance Resource Center at least  
4 annually.

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

6 Sec. 155.19. All claims filed after December 31, 1976 with  
7 any insurer and all suits filed after December 31, 1976 in any  
8 court in this State, alleging liability on the part of any  
9 physician, hospital or other health care provider for medically  
10 related injuries, shall be reported to the Director of  
11 Insurance in such form and under such terms and conditions as  
12 may be prescribed by the Director. Notwithstanding any other  
13 provision of law to the contrary, any insurer, stop loss  
14 insurer, captive insurer, risk retention group, county risk  
15 retention trust, religious or charitable risk pooling trust,  
16 surplus line insurer, or other entity authorized or permitted  
17 by law to provide medical liability insurance in this State  
18 shall report to the Director, in such form and under such terms  
19 and conditions as may be prescribed by the Director, all claims  
20 filed after December 31, 2004 and all suits filed after  
21 December 31, 2004 in any court in this State alleging liability  
22 on the part of any physician, hospital, or health care provider  
23 for medically-related injuries. Each clerk of the circuit court  
24 shall provide to the Director such information as the Director  
25 may deem necessary to verify the accuracy and completeness of  
26 reports made to the Director under this Section. The Director  
27 shall maintain complete and accurate records of all such claims  
28 and suits including their nature, amount, disposition and other  
29 information as he may deem useful or desirable in observing and  
30 reporting on health care provider liability trends in this  
31 State. The Director shall release to appropriate disciplinary  
32 and licensing agencies any such data or information which may  
33 assist such agencies in improving the quality of health care or

1 which may be useful to such agencies for the purpose of  
2 professional discipline.

3 With due regard for appropriate maintenance of the  
4 confidentiality thereof, the Director shall ~~may~~ release, on an  
5 annual basis, from time to time to the Governor, the General  
6 Assembly and the general public statistical reports based on  
7 such data and information.

8 If the Director finds that any entity required to report  
9 information in its possession under this Section has violated  
10 any provision of this Section by filing late, incomplete, or  
11 inaccurate reports, the Director may fine the entity up to  
12 \$1,000 for each offense. Each day during which a violation  
13 occurs constitutes a separate offense.

14 The Director may promulgate such rules and regulations as  
15 may be necessary to carry out the provisions of this Section.

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

17 (215 ILCS 5/402) (from Ch. 73, par. 1014)

18 Sec. 402. Examinations, investigations and hearings. (1)  
19 All examinations, investigations and hearings provided for by  
20 this Code may be conducted either by the Director personally,  
21 or by one or more of the actuaries, technical advisors,  
22 deputies, supervisors or examiners employed or retained by the  
23 Department and designated by the Director for such purpose.  
24 When necessary to supplement its examination procedures, the  
25 Department may retain independent actuaries deemed competent  
26 by the Director, independent certified public accountants, or  
27 qualified examiners of insurance companies deemed competent by  
28 the Director, or any combination of the foregoing, the cost of  
29 which shall be borne by the company or person being examined.  
30 The Director may compensate independent actuaries, certified  
31 public accountants and qualified examiners retained for  
32 supplementing examination procedures in amounts not to exceed  
33 the reasonable and customary charges for such services. The

1 Director may also accept as a part of the Department's  
2 examination of any company or person (a) a report by an  
3 independent actuary deemed competent by the Director or (b) a  
4 report of an audit made by an independent certified public  
5 accountant. Neither those persons so designated nor any members  
6 of their immediate families shall be officers of, connected  
7 with, or financially interested in any company other than as  
8 policyholders, nor shall they be financially interested in any  
9 other corporation or person affected by the examination,  
10 investigation or hearing.

11 (2) All hearings provided for in this Code shall, unless  
12 otherwise specially provided, be held at such time and place as  
13 shall be designated in a notice which shall be given by the  
14 Director in writing to the person or company whose interests  
15 are affected, at least 10 days before the date designated  
16 therein. The notice shall state the subject of inquiry and the  
17 specific charges, if any. The hearings shall be held in the  
18 City of Springfield, the City of Chicago, or in the county  
19 where the principal business address of the person or company  
20 affected is located.

21 (3) For a rate increase filing in medical liability  
22 insurance under Section 155.18 of this Code, the Director may  
23 hold a hearing with the insurance company and policyholders  
24 present for the purpose of receiving testimony from the  
25 insurance company and policyholders regarding the rate  
26 increase. The hearing must occur under written and express  
27 terms and conditions that are sufficient to protect from  
28 disclosure information that the subject medical liability  
29 insurance company deems proprietary, confidential, or a trade  
30 secret. The insurance company must give notice of the hearing  
31 time, date, and location to medical liability insurance  
32 policyholders whose rates have increased. Notice to  
33 policyholders may be given through regular publications issued  
34 to policyholders or by electronic means. Other than the cost of

1 this notice, the Department shall be responsible for the costs  
2 of this hearing.

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

4 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

5 Sec. 1204. (A) The Director shall promulgate rules and  
6 regulations which shall require each insurer licensed to write  
7 property or casualty insurance in the State and each syndicate  
8 doing business on the Illinois Insurance Exchange to record and  
9 report its loss and expense experience and other data as may be  
10 necessary to assess the relationship of insurance premiums and  
11 related income as compared to insurance costs and expenses. The  
12 Director may designate one or more rate service organizations  
13 or advisory organizations to gather and compile such experience  
14 and data. The Director shall require each insurer licensed to  
15 write property or casualty insurance in this State and each  
16 syndicate doing business on the Illinois Insurance Exchange to  
17 submit a report, on a form furnished by the Director, showing  
18 its direct writings in this State and companywide.

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

22 (1) Political subdivision liability insurance reported  
23 separately in the following categories:

24 (a) municipalities;

25 (b) school districts;

26 (c) other political subdivisions;

27 (2) Public official liability insurance;

28 (3) Dram shop liability insurance;

29 (4) Day care center liability insurance;

30 (5) Labor, fraternal or religious organizations  
31 liability insurance;

32 (6) Errors and omissions liability insurance;

33 (7) Officers and directors liability insurance



1 reported separately as follows:

2 (a) non-profit entities;

3 (b) for-profit entities;

4 (8) Products liability insurance;

5 (9) Medical malpractice insurance;

6 (10) Attorney malpractice insurance;

7 (11) Architects and engineers malpractice insurance;

8 and

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

11 (a) motor vehicle physical damage insurance;

12 (b) motor vehicle liability insurance.

13 (C) Such report may include, but need not be limited to the  
14 following data, both specific to this State and companywide, in  
15 the aggregate or by type of insurance for the previous year on  
16 a calendar year basis:

17 (1) Direct premiums written;

18 (2) Direct premiums earned;

19 (3) Number of policies;

20 (4) Net investment income, using appropriate estimates  
21 where necessary;

22 (5) Losses paid;

23 (6) Losses incurred;

24 (7) Loss reserves:

25 (a) Losses unpaid on reported claims;

26 (b) Losses unpaid on incurred but not reported  
27 claims;

28 (8) Number of claims:

29 (a) Paid claims;

30 (b) Arising claims;

31 (9) Loss adjustment expenses:

32 (a) Allocated loss adjustment expenses;

33 (b) Unallocated loss adjustment expenses;

34 (10) Net underwriting gain or loss;

1 (11) Net operation gain or loss, including net  
2 investment income;

3 (12) Any other information requested by the Director.

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

6 (1) In addition to the other requirements of this  
7 Section, all medical malpractice insurers shall include  
8 the following information in the report required by  
9 subsection (A) of this Section in such form and under such  
10 terms and conditions as may be prescribed by the Director:

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

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

15 (2) All information collected by the Director under  
16 paragraph (1) of this subsection (C-5) shall be made  
17 available, on an aggregate basis, to the General Assembly  
18 and the general public. This provision shall supersede any  
19 other provision of law that may otherwise protect such  
20 information from public disclosure as confidential. The  
21 identity of the plaintiff, the defendant, the attorneys,  
22 and the company shall not be disclosed.

23 (D) In addition to the information which may be requested  
24 under subsection (C), the Director may also request on a  
25 companywide, aggregate basis, Federal Income Tax recoverable,  
26 net realized capital gain or loss, net unrealized capital gain  
27 or loss, and all other expenses not requested in subsection (C)  
28 above.

29 (E) Violations - Suspensions - Revocations.

30 (1) Any company or person subject to this Article, who  
31 willfully or repeatedly fails to observe or who otherwise  
32 violates any of the provisions of this Article or any rule  
33 or regulation promulgated by the Director under authority  
34 of this Article or any final order of the Director entered

1 under the authority of this Article shall by civil penalty  
2 forfeit to the State of Illinois a sum not to exceed  
3 \$2,000. Each day during which a violation occurs  
4 constitutes a separate offense.

5 (2) No forfeiture liability under paragraph (1) of this  
6 subsection may attach unless a written notice of apparent  
7 liability has been issued by the Director and received by  
8 the respondent, or the Director sends written notice of  
9 apparent liability by registered or certified mail, return  
10 receipt requested, to the last known address of the  
11 respondent. Any respondent so notified must be granted an  
12 opportunity to request a hearing within 10 days from  
13 receipt of notice, or to show in writing, why he should not  
14 be held liable. A notice issued under this Section must set  
15 forth the date, facts and nature of the act or omission  
16 with which the respondent is charged and must specifically  
17 identify the particular provision of this Article, rule,  
18 regulation or order of which a violation is charged.

19 (3) No forfeiture liability under paragraph (1) of this  
20 subsection may attach for any violation occurring more than  
21 2 years prior to the date of issuance of the notice of  
22 apparent liability and in no event may the total civil  
23 penalty forfeiture imposed for the acts or omissions set  
24 forth in any one notice of apparent liability exceed  
25 \$100,000.

26 (4) All administrative hearings conducted pursuant to  
27 this Article are subject to 50 Ill. Adm. Code 2402 and all  
28 administrative hearings are subject to the Administrative  
29 Review Law.

30 (5) The civil penalty forfeitures provided for in this  
31 Section are payable to the General Revenue Fund of the  
32 State of Illinois, and may be recovered in a civil suit in  
33 the name of the State of Illinois brought in the Circuit  
34 Court in Sangamon County or in the Circuit Court of the

1 county where the respondent is domiciled or has its  
2 principal operating office.

3 (6) In any case where the Director issues a notice of  
4 apparent liability looking toward the imposition of a civil  
5 penalty forfeiture under this Section that fact may not be  
6 used in any other proceeding before the Director to the  
7 prejudice of the respondent to whom the notice was issued,  
8 unless (a) the civil penalty forfeiture has been paid, or  
9 (b) a court has ordered payment of the civil penalty  
10 forfeiture and that order has become final.

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

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

32 (9) No suspension or revocation under this Section may  
33 become effective until 5 days from the date that the notice  
34 of suspension or revocation has been personally delivered

1 or delivered by registered or certified mail to the company  
2 or person. A suspension or revocation under this Section is  
3 stayed upon the filing, by the company or person, of a  
4 petition for judicial review under the Administrative  
5 Review Law.

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

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

9 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

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

11 Sec. 7. Medical Disciplinary Board.

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

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

1 of the unexpired term by and with the advice and consent of the  
2 Senate. Upon recommendation of the Board, any member of the  
3 Disciplinary Board may be removed by the Governor for  
4 misfeasance, malfeasance, or wilful neglect of duty, after  
5 notice, and a public hearing, unless such notice and hearing  
6 shall be expressly waived in writing. Each member shall serve  
7 on the Disciplinary Board until their successor is appointed  
8 and qualified. No member of the Disciplinary Board shall serve  
9 more than 2 consecutive 4 year terms.

10 In making appointments the Governor shall attempt to insure  
11 that the various social and geographic regions of the State of  
12 Illinois are properly represented.

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

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

23 (D) (Blank).

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

1 (F) Each member, and member-officer, of the Disciplinary  
2 Board shall receive a per diem stipend as the Director of the  
3 Department, hereinafter referred to as the Director, shall  
4 determine. The Director shall also determine the per diem  
5 stipend that each ex-officio member shall receive. Each member  
6 shall be paid their necessary expenses while engaged in the  
7 performance of their duties.

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

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

34 (H) Upon the specific request of the Disciplinary Board,

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

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

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

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

26 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

28 Sec. 22. Disciplinary action.

29 (A) The Department may revoke, suspend, place on  
30 probationary status, refuse to renew, or take any other  
31 disciplinary action as the Department may deem proper with  
32 regard to the license or visiting professor permit of any  
33 person issued under this Act to practice medicine, or to treat



1 human ailments without the use of drugs and without operative  
2 surgery upon any of the following grounds:

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

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

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

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

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

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

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

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

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

33 (5) Engaging in dishonorable, unethical or  
34 unprofessional conduct of a character likely to deceive,

1 defraud or harm the public.

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

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

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

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

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

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

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

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

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

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

34 (15) A finding by the Medical Disciplinary Board that

1 the registrant after having his or her license placed on  
2 probationary status or subjected to conditions or  
3 restrictions violated the terms of the probation or failed  
4 to comply with such terms or conditions.

5 (16) Abandonment of a patient.

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

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

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

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

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

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

33 (23) Being named as a perpetrator in an indicated  
34 report by the Department of Children and Family Services

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

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

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

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

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

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

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

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

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

34 (32) Aiding and abetting an individual not licensed

1 under this Act in the practice of a profession licensed  
2 under this Act.

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

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

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

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

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

33 (38) Failure to furnish the Department, its  
34 investigators or representatives, relevant information,

1           legally requested by the Department after consultation  
2           with the Chief Medical Coordinator or the Deputy Medical  
3           Coordinator.

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

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

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

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

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

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

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

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

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

33 The Department, upon the recommendation of the  
34 Disciplinary Board, shall adopt rules which set forth standards



1 to be used in determining:

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

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

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

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

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

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

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

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

33 The Department may promulgate rules for the imposition of  
34 fines in disciplinary cases, not to exceed \$10,000 ~~\$5,000~~ for

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

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

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

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

31 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

33 Sec. 23. Reports relating to professional conduct and

1 capacity.

2 (A) Entities required to report.

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

1 reports of impaired physicians shall not be considered  
2 records within the meaning of The State Records Act and  
3 shall be disposed of, following a determination by the  
4 Disciplinary Board that such reports are no longer  
5 required, in a manner and at such time as the Disciplinary  
6 Board shall determine by rule. The filing of such reports  
7 shall be construed as the filing of a report for purposes  
8 of subsection (C) of this Section.

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

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

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

1 physician has willfully violated the notice requirements  
2 of the Parental Notice of Abortion Act of 1995.

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

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

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

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

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

34 (4) A brief description of the facts which gave rise to

1 the issuance of the report, including the dates of any  
2 occurrences deemed to necessitate the filing of the report.

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

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

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

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

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

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

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

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

31 Should the Attorney General decline representation, the  
32 member shall have the right to employ counsel of his or her  
33 choice, whose fees shall be provided by the State, after  
34 approval by the Attorney General, unless there is a



1 determination by a court that the member's actions were not in  
2 good faith or were wilful and wanton.

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

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

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

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

34 The Disciplinary Board shall review all reports received by

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

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

16 Should the Disciplinary Board find that there are not  
17 sufficient facts to warrant further investigation, or action,  
18 the report shall be accepted for filing and the matter shall be  
19 deemed closed and so reported to the Director. The Director  
20 shall then have 30 days to accept the Medical Disciplinary  
21 Board's decision or request further investigation. The  
22 Director shall inform the Board in writing of the decision to  
23 request further investigation, including the specific reasons  
24 for the decision. The individual or entity filing the original  
25 report or complaint and the person who is the subject of the  
26 report or complaint shall be notified in writing by the  
27 Director of any final 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 Director, Disciplinary Board,  
20 the Medical Coordinators, persons employed by contract to  
21 advise the Medical Coordinator or the Department, the  
22 Disciplinary Board's attorneys, the medical investigative  
23 staff, and authorized clerical staff, as provided in this Act  
24 and shall be afforded the same status as is provided  
25 information concerning medical studies in Part 21 of Article  
26 VIII of the Code of Civil Procedure, except that the Department  
27 may disclose information and documents to a federal, State, or  
28 local law enforcement agency pursuant to a subpoena in an  
29 ongoing criminal investigation. Furthermore, information and  
30 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. Director of Insurance. Each clerk of the  
5 circuit court shall provide to the Director of Insurance such  
6 information as the Director of Insurance requests under Section  
7 155.19 of the Illinois Insurance Code.

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

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

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

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

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

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

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

30 ~~(e) As a part of the discharge planning process the patient~~  
31 ~~or, if appropriate, members of his family must be given a copy~~

1 ~~of the health care arbitration agreement previously executed by~~  
2 ~~or for the patient and shall re-affirm it.~~

3 ~~Failure to comply with this provision during the discharge~~  
4 ~~planning process shall void the health care arbitration~~  
5 ~~agreement.~~

6 (e) This amendatory Act of the 93rd General Assembly  
7 applies to health care arbitration agreements executed on or  
8 after its effective date.

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

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

11 Sec. 9. Mandatory Provisions.

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

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

20 (c) Every health care arbitration agreement may be  
21 cancelled by any signatory (1) within 120 ~~60~~ days of its  
22 execution or within 120 ~~60~~ days of the date of the patient's  
23 discharge from the hospital, whichever is later, as to an  
24 agreement in relation to health care services rendered during  
25 hospitalization, ~~provided, that if executed other than at the~~  
26 ~~time of discharge of the patient from the hospital, the health~~  
27 ~~care arbitration agreement be reaffirmed at the time of the~~  
28 ~~discharge planning process in the same manner as provided for~~  
29 ~~in the execution of the original agreement;~~ or (2) within 120  
30 ~~60~~ days of the date of its execution, or the last date of  
31 treatment by the health care provider, whichever is later, as  
32 to an agreement in relation to health care services not  
33 rendered during hospitalization. Provided, that no health care



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

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

21 "AGREEMENT TO ARBITRATE HEALTH CARE

22 NEGLIGENCE CLAIMS

23 NOTICE TO PATIENT

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

30 THIS AGREEMENT MAY BE CANCELLED WITHIN 120 ~~60~~ DAYS OF  
31 SIGNING OR 120 ~~60~~ DAYS AFTER YOUR HOSPITAL DISCHARGE,  
32 WHICHEVER IS LATER, OR 120 ~~60~~ DAYS AFTER YOUR LAST MEDICAL  
33 TREATMENT IN RELATION TO HEALTH CARE SERVICES NOT RENDERED  
34 DURING HOSPITALIZATION.

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

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

12 (f) This amendatory Act of the 93rd General Assembly  
13 applies to health care arbitration agreements executed on or  
14 after its effective date.

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

16 Section 330. The Code of Civil Procedure is amended by  
17 reenacting and changing Sections 2-402, 2-622, 2-1107.1, and  
18 8-2501, by changing Sections 2-1704 and 8-1901, and by adding  
19 Sections 2-1105.01 and 2-1721 as follows:

20 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

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

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

29 Persons or entities so named as respondents in discovery  
30 shall be required to respond to discovery by the plaintiff in  
31 the same manner as are defendants and may, on motion of the  
32 plaintiff, be added as defendants if the evidence discloses the

1 existence of probable cause for such action.

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

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

8 Each respondent in discovery shall be paid expenses and  
9 fees as provided for witnesses.

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

22 This amendatory Act of the 93rd General Assembly applies to  
23 causes of action pending on or after its effective date.

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

25 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

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

28 Sec. 2-622. Healing art malpractice.

29 (a) In any action, whether in tort, contract or otherwise,  
30 in which the plaintiff seeks damages for injuries or death by  
31 reason of medical, hospital, or other healing art malpractice,  
32 the plaintiff's attorney or the plaintiff, if the plaintiff is  
33 proceeding pro se, shall file an affidavit, attached to the

1 original and all copies of the complaint, declaring one of the  
2 following:

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

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

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

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

27 3. That a request has been made by the plaintiff or his  
28 attorney for examination and copying of records pursuant to  
29 Part 20 of Article VIII of this Code and the party required  
30 to comply under those Sections has failed to produce such  
31 records within 60 days of the receipt of the request. If an  
32 affidavit is executed pursuant to this paragraph, the  
33 affidavit ~~certificate~~ and written report required by  
34 paragraph 1 shall be filed within 90 days following receipt

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

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

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

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

27 (e) Allegations and denials in the affidavit, made without  
28 reasonable cause and found to be untrue, shall subject the  
29 party pleading them or his attorney, or both, to the payment of  
30 reasonable expenses, actually incurred by the other party by  
31 reason of the untrue pleading, together with reasonable  
32 attorneys' fees to be summarily taxed by the court upon motion  
33 made within 30 days of the judgment or dismissal. In no event  
34 shall the award for attorneys' fees and expenses exceed those

1 actually paid by the moving party, including the insurer, if  
2 any. In proceedings under this paragraph (e), the moving party  
3 shall have the right to depose and examine any and all  
4 reviewing health professionals who prepared reports used in  
5 conjunction with an affidavit required by this Section.

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

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

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

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

21 (j) This amendatory Act of the 93rd General Assembly  
22 applies to causes of action accruing on or after its effective  
23 date.

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

25 (735 ILCS 5/2-1105.01 new)

26 Sec. 2-1105.01. Personal assets protected in healing art  
27 malpractice cases. In all cases, whether tort, contract, or  
28 otherwise, in which the plaintiff seeks damages by reason of  
29 medical healing art malpractice, a physician who maintains at  
30 least a minimum of \$1,000,000 in professional liability  
31 insurance coverage to cover a claim against him or her is  
32 entitled to an exemption of his or her assets from attachment,  
33 garnishment, or other form of forfeiture to satisfy any



1 judgment or verdict in the amount equal to 2 times the maximum  
2 amount payable per occurrence under his or her insurance  
3 coverage. Corporate assets are subject to attachment for  
4 satisfaction of a judgment. For the purposes of this Section,  
5 "asset" includes, without limitation, any asset, property  
6 (real or personal), interest, or other thing of value, of any  
7 kind or character whatsoever that would otherwise be subject to  
8 immediate execution to satisfy a judgment.

9 This Section shall not restrict, impair, or otherwise  
10 affect the amount of damages that may be awarded to the  
11 plaintiff or the amount of any judgment in favor of the  
12 plaintiff. This Section shall not restrict, impair, or  
13 otherwise affect the statutory and common law causes of action  
14 a physician or the physician's assignee has against the  
15 physician's insurer for the insurer acting in bad faith or  
16 vexatiously and without reasonable cause by failing to settle  
17 the action against the physician within the physician's  
18 insurance policy limits. The plaintiff shall be required to  
19 prove all the elements of any such cause of action. This  
20 Section shall not reduce or limit the damages that otherwise  
21 would have been recoverable in any such action.

22 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

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

25 Sec. 2-1107.1. Jury instruction in tort actions.

26 (a) In all actions on account of bodily injury or death or  
27 physical damage to property based on negligence, or product  
28 liability based on strict tort liability, the court shall  
29 instruct the jury in writing that the defendant shall be found  
30 not liable if the jury finds that the contributory fault of the  
31 plaintiff is more than 50% of the proximate cause of the injury  
32 or damage for which recovery is sought.

33 (b) In all healing art malpractice actions, the court shall

1 instruct the jury in writing whether or not any award of  
2 compensatory damages will be taxable under federal or State  
3 income tax law.

4 The changes to this Section made by this amendatory Act of  
5 the 93rd General Assembly apply to causes of action filed on or  
6 after its effective date.

7 (Source: P.A. 84-1431.)

8 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

9 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~  
10 ~~Action~~. As used in this Code Part, "healing art medical  
11 malpractice action" means any action, whether in tort, contract  
12 or otherwise, in which the plaintiff seeks damages for injuries  
13 or death by reason of medical, hospital, or other healing art  
14 malpractice including but not limited to medical, hospital,  
15 nursing, dental, or podiatric malpractice. The term "healing  
16 art" shall not include care and treatment by spiritual means  
17 through prayer in accord with the tenets and practices of a  
18 recognized church or religious denomination.

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

20 (735 ILCS 5/2-1721 new)

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

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

26 (1) the patient was unconscious or unaware of his or  
27 her surroundings upon arrival at the hospital and the  
28 patient's legal representative was not present at the time  
29 to be informed that the non-employee member of its medical  
30 staff is not an agent or employee of the hospital; or

31 (2) the specific member of the hospital's medical staff  
32 personally informed the patient, or his or her legal

1 representative, if present, before rendering treatment  
2 that he or she was not an agent or employee of the  
3 hospital.

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

7 (1) the following disclosure is provided to the patient  
8 prior to the provision of the care in question in a  
9 separate document, complete in itself and not part of any  
10 other contract or instrument, which shall contain in upper  
11 case type in printed letters of at least 3/16 inch height a  
12 caption and statement as follows:

13 **NOTICE OF STATUS OF TREATING PHYSICIANS**

14 SOME PHYSICIANS WHO WILL TREAT YOU AT THIS HOSPITAL MAY NOT  
15 BE EMPLOYEES OF THE HOSPITAL AND AS SUCH, THE HOSPITAL IS  
16 NOT RESPONSIBLE FOR ANY CONDUCT OF ANY NON-EMPLOYEE  
17 PHYSICIANS ON THE BASIS THAT THEY ARE HOSPITAL AGENTS OR  
18 EMPLOYEES; and

19 (2) if the patient is asked to sign the disclosure, the  
20 disclosure shall contain immediately above the signature  
21 lines, in upper case bold type printed letters of at least  
22 3/16 inch height, a statement that the patient cannot be  
23 required to sign the disclosure in order to receive  
24 treatment; and

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

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

31 (A) Whether the patient knowingly and voluntarily  
32 signed the disclosure.

33 (B) Whether the hospital provided an opportunity  
34 for the patient to ask questions.

1           (C) Whether the patient's questions about this  
2           disclosure were answered and the contents of the  
3           answers.

4           (D) Whether such disclosure was provided orally  
5           and in writing.

6           (E) Whether a reasonable person under the  
7           circumstances should have understood the disclosure.

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

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

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

15          (e) This amendatory Act of the 93rd General Assembly  
16          applies to causes of action accruing on or after its effective  
17          date.

18           (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

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

31          (b) Any expression of grief, apology, or explanation  
32          provided by a health care provider, including, but not limited  
33          to, a statement that the health care provider is "sorry" for

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

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

17 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

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

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

1 (b) Whether the witness has devoted a majority ~~substantial~~  
2 ~~portion~~ of his or her work time to the practice of medicine,  
3 teaching or University based research in relation to the  
4 medical care and type of treatment at issue which gave rise to  
5 the medical problem of which the plaintiff complains;

6 (c) whether the witness is licensed in the same profession  
7 with the same class of license as the defendant if the  
8 defendant is an individual; and

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

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

20 This amendatory Act of the 93rd General Assembly applies to  
21 causes of action filed on or after its effective date.

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

23 Section 340. The Good Samaritan Act is amended by changing  
24 Section 30 as follows:

25 (745 ILCS 49/30)

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

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

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

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

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

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

31 (d-5) A free medical clinic may receive reimbursement from  
32 the Illinois Department of Public Aid, provided any  
33 reimbursements shall be used only to pay overhead expenses of  
34 operating the free medical clinic and may not be used, in whole

1 or in part, to provide a fee or other compensation to any  
2 person licensed under the Medical Practice Act of 1987 or any  
3 other health care professional who is receiving an exemption  
4 under this Section. Any health care professional receiving an  
5 exemption under this Section may not receive any fee or other  
6 compensation in connection with any services provided to, or  
7 any ownership interest in, the clinic. Medical care shall not  
8 include an overnight stay in a health care facility.

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

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

20 (g) This amendatory Act of the 93rd General Assembly  
21 applies to causes of action accruing on or after its effective  
22 date.

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

24 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

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

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



1 approval of the hospital administration and the hospital's  
2 organized medical staff. During the second year of the  
3 program's operation, participation in the program shall be open  
4 to one additional hospital.

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

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

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

1 subject to appropriation. Moneys in the Fund shall consist of  
2 funds transferred into the Fund or otherwise made available  
3 from any source.

4 Section 410. Establishment of committee.

5 (a) A committee is established to develop, oversee, and  
6 implement the Sorry Works! pilot program. The committee shall  
7 have 10 members, each of whom shall be a voting member. Six  
8 members of the committee shall constitute a quorum. The  
9 committee shall be comprised as follows:

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

14 (2) The Director of Professional Regulation or his or  
15 her designee.

16 (3) The Director of Insurance or his or her designee.

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

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

27 (d) The committee shall report to the Governor and the  
28 General Assembly annually.

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

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

1 Section 415. Termination of program.

2 (a) The program may be terminated at any time if the  
3 committee, by a vote of two-thirds of its members, votes to  
4 terminate the program.

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

7 Section 495. The State Finance Act is amended by adding  
8 Section 5.626 as follows:

9 (30 ILCS 105/5.626 new)

10 Sec. 5.626. The Sorry Works! Fund.

11 ARTICLE 9. MISCELLANEOUS PROVISIONS

12 Section 995. Liberal construction; inseverability.

13 (a) This Act, being necessary for the welfare of the State  
14 and its inhabitants, shall be liberally construed to effect its  
15 purposes.

16 (b) The provisions of this Act are mutually dependent and  
17 inseverable. If any provision is held invalid other than as  
18 applied to a particular person or circumstance, then this  
19 entire Act is invalid.

20 Section 999. Effective date. This Act takes effect upon  
21 becoming law."