

1 AN ACT concerning State employees.

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

4 Section 5. The State Employee Indemnification Act is
5 amended by changing Sections 1 and 2 as follows:

6 (5 ILCS 350/1) (from Ch. 127, par. 1301)

7 Sec. 1. Definitions. For the purpose of this Act:

8 (a) The term "State" means the State of Illinois, the
9 General Assembly, the court, or any State office, department,
10 division, bureau, board, commission, or committee, the
11 governing boards of the public institutions of higher
12 education created by the State, the Illinois National Guard,
13 the Comprehensive Health Insurance Board, any poison control
14 center designated under the Poison Control System Act that
15 receives State funding, or any other agency or
16 instrumentality of the State. It does not mean any local
17 public entity as that term is defined in Section 1-206 of the
18 Local Governmental and Governmental Employees Tort Immunity
19 Act or a pension fund.

20 (b) The term "employee" means any present or former
21 elected or appointed officer, trustee or employee of the
22 State, or of a pension fund, any present or former member of
23 the Illinois National Guard while on active duty, individuals
24 or organizations who contract with the Department of
25 Corrections, the Comprehensive Health Insurance Board, or the
26 Department of Veterans' Affairs to provide services,
27 individuals or organizations who contract with the Department
28 of Human Services (as successor to the Department of Mental
29 Health and Developmental Disabilities) to provide services
30 including but not limited to treatment and other services for
31 sexually violent persons, individuals or organizations who

1 contract with the Department of Military Affairs for youth
2 programs, individuals or organizations who contract to
3 perform carnival and amusement ride safety inspections for
4 the Department of Labor, individual representatives of or
5 designated organizations authorized to represent the Office
6 of State Long-Term Ombudsman for the Department on Aging,
7 individual representatives of or organizations designated by
8 the Department on Aging in the performance of their duties as
9 elder abuse provider agencies or regional administrative
10 agencies under the Elder Abuse and Neglect Act, individuals
11 or organizations who perform volunteer services for the
12 State, including, without limitation, State universities,
13 where such volunteer relationship is reduced to writing,
14 individuals who serve on any public entity (whether created
15 by law or administrative action) described in paragraph (a)
16 of this Section, individuals or not for profit organizations
17 who, either as volunteers, where such volunteer relationship
18 is reduced to writing, or pursuant to contract, furnish
19 professional advice or consultation to any agency or
20 instrumentality of the State, individuals who serve as foster
21 parents for the Department of Children and Family Services
22 when caring for a Department ward, and individuals who serve
23 as arbitrators pursuant to Part 10A of Article II of the Code
24 of Civil Procedure and the rules of the Supreme Court
25 implementing Part 10A, each as now or hereafter amended, but
26 does not mean an independent contractor except as provided in
27 this Section. The term includes an individual appointed as an
28 inspector by the Director of State Police when performing
29 duties within the scope of the activities of a Metropolitan
30 Enforcement Group or a law enforcement organization
31 established under the Intergovernmental Cooperation Act. An
32 individual who renders professional advice and consultation
33 to the State through an organization which qualifies as an
34 "employee" under the Act is also an employee. The term

1 includes the estate or personal representative of an
2 employee.

3 (c) The term "pension fund" means a retirement system or
4 pension fund created under the Illinois Pension Code.

5 (Source: P.A. 90-793, eff. 8-14-98; 91-726, eff. 6-2-00.)

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

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

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

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

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

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

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

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

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

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

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

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

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

1 which gave rise to the claim or cause of action was
2 intentional, wilful or wanton misconduct and was not intended
3 to serve or benefit interests of the State, which includes,
4 without limitation, all the educational, experiential,
5 recreational, cultural, teaching, research, service, and
6 extension interests of State universities, the case may be
7 settled, in the Attorney General's discretion and with the
8 employee's consent, and the State shall indemnify the
9 employee for any damages, court costs and attorneys' fees
10 agreed to as part of the settlement, or shall pay such
11 settlement. Where the employee is represented by private
12 counsel, any settlement must be so approved by the Attorney
13 General and the court having jurisdiction, which shall
14 obligate the State to indemnify the employee.

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

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

1 payment of claims covered by this Section.

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

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

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

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

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

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

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

29 Section 10. The Department of Central Management
30 Services Law of the Civil Administrative Code of Illinois is
31 amended by changing Section 405-105 as follows:

32 (20 ILCS 405/405-105) (was 20 ILCS 405/64.1)

1 Sec. 405-105. Fidelity, surety, property, and casualty
2 insurance. The Department shall establish and implement a
3 program to coordinate the handling of all fidelity, surety,
4 property, and casualty insurance exposures of the State and
5 the departments, divisions, agencies, branches, and
6 universities of the State. In performing this
7 responsibility, the Department shall have the power and duty
8 to do the following:

9 (1) Develop and maintain loss and exposure data on all
10 State property.

11 (2) Study the feasibility of establishing a
12 self-insurance plan for State property and prepare estimates
13 of the costs of reinsurance for risks beyond the realistic
14 limits of the self-insurance.

15 (3) Prepare a plan for centralizing the purchase of
16 property and casualty insurance on State property under a
17 master policy or policies and purchase the insurance
18 contracted for as provided in the Illinois Purchasing Act.

19 (4) Evaluate existing provisions for fidelity bonds
20 required of State employees and recommend changes that are
21 appropriate commensurate with risk experience and the
22 determinations respecting self-insurance or reinsurance so as
23 to permit reduction of costs without loss of coverage.

24 (5) Investigate procedures for inclusion of school
25 districts, public community college districts, and other
26 units of local government in programs for the centralized
27 purchase of insurance.

28 (6) Implement recommendations of the State Property
29 Insurance Study Commission that the Department finds
30 necessary or desirable in the performance of its powers and
31 duties under this Section to achieve efficient and
32 comprehensive risk management.

33 (7) Prepare and, in the discretion of the Director,
34 implement a plan providing for the purchase of public

1 liability insurance or for self-insurance for public
2 liability or for a combination of purchased insurance and
3 self-insurance for public liability (i) covering the State
4 and drivers of motor vehicles owned, leased, or controlled by
5 the State of Illinois pursuant to the provisions and
6 limitations contained in the Illinois Vehicle Code, (ii)
7 covering other public liability exposures of the State and
8 its employees within the scope of their employment, and (iii)
9 covering drivers of motor vehicles not owned, leased, or
10 controlled by the State but used by a State employee on State
11 business, including, without limitation, traditional credit
12 and non-credit programs, extension services, and
13 institutionally-approved activities and services of State
14 universities, in excess of liability covered by an insurance
15 policy obtained by the owner of the motor vehicle or in
16 excess of the dollar amounts that the Department shall
17 determine to be reasonable. Any contract of insurance let
18 under this Law shall be by bid in accordance with the
19 procedure set forth in the Illinois Purchasing Act. Any
20 provisions for self-insurance shall conform to subdivision
21 (11).

22 The term "employee" as used in this subdivision (7) and
23 in subdivision (11) means a person while in the employ of the
24 State who is a member of the staff or personnel of a State
25 agency, bureau, board, commission, committee, department,
26 university, or college or who is a State officer, elected
27 official, commissioner, member of or ex officio member of a
28 State agency, bureau, board, commission, committee,
29 department, university, or college, or a member of the
30 National Guard while on active duty pursuant to orders of the
31 Governor of the State of Illinois, or any other person while
32 using a licensed motor vehicle owned, leased, or controlled
33 by the State of Illinois with the authorization of the State
34 of Illinois, provided the actual use of the motor vehicle is

1 within the scope of that authorization and within the course
2 of State service.

3 Subsequent to payment of a claim on behalf of an employee
4 pursuant to this Section and after reasonable advance written
5 notice to the employee, the Director may exclude the employee
6 from future coverage or limit the coverage under the plan if
7 (i) the Director determines that the claim resulted from an
8 incident in which the employee was grossly negligent or had
9 engaged in willful and wanton misconduct or (ii) the Director
10 determines that the employee is no longer an acceptable risk
11 based on a review of prior accidents in which the employee
12 was at fault and for which payments were made pursuant to
13 this Section.

14 The Director is authorized to promulgate administrative
15 rules that may be necessary to establish and administer the
16 plan.

17 Appropriations from the Road Fund shall be used to pay
18 auto liability claims and related expenses involving
19 employees of the Department of Transportation, the Illinois
20 State Police, and the Secretary of State.

21 (8) Charge, collect, and receive from all other agencies
22 of the State government fees or monies equivalent to the cost
23 of purchasing the insurance.

24 (9) Establish, through the Director, charges for risk
25 management services rendered to State agencies by the
26 Department. The State agencies so charged shall reimburse the
27 Department by vouchers drawn against their respective
28 appropriations. The reimbursement shall be determined by the
29 Director as amounts sufficient to reimburse the Department
30 for expenditures incurred in rendering the service.

31 The Department shall charge the employing State agency or
32 university for workers' compensation payments for temporary
33 total disability paid to any employee after the employee has
34 received temporary total disability payments for 120 days if

1 the employee's treating physician has issued a release to
2 return to work with restrictions and the employee is able to
3 perform modified duty work but the employing State agency or
4 university does not return the employee to work at modified
5 duty. Modified duty shall be duties assigned that may or may
6 not be delineated as part of the duties regularly performed
7 by the employee. Modified duties shall be assigned within
8 the prescribed restrictions established by the treating
9 physician and the physician who performed the independent
10 medical examination. The amount of all reimbursements shall
11 be deposited into the Workers' Compensation Revolving Fund
12 which is hereby created as a special fund in the State
13 treasury. Moneys in the Fund shall be used, subject to
14 appropriation, to pay these or other temporary total
15 disability claims of employees of State agencies and
16 universities.

17 Beginning with fiscal year 1996, all amounts recovered by
18 the Department through subrogation in workers' compensation
19 and workers' occupational disease cases shall be deposited
20 into the Workers' Compensation Revolving Fund created under
21 this subdivision (9).

22 (10) Establish rules, procedures, and forms to be used
23 by State agencies in the administration and payment of
24 workers' compensation claims. The Department shall initially
25 evaluate and determine the compensability of any injury that
26 is the subject of a workers' compensation claim and provide
27 for the administration and payment of such a claim for all
28 State agencies. The Director may delegate to any agency with
29 the agreement of the agency head the responsibility for
30 evaluation, administration, and payment of that agency's
31 claims.

32 (11) Any plan for public liability self-insurance
33 implemented under this Section shall provide that (i) the
34 Department shall attempt to settle and may settle any public

1 liability claim filed against the State of Illinois or any
2 public liability claim filed against a State employee on the
3 basis of an occurrence in the course of the employee's State
4 employment; (ii) any settlement of such a claim must be
5 approved by the Director and, in cases of settlements
6 exceeding \$100,000, by the Governor; and (iii) a settlement
7 of any public liability claim against the State or a State
8 employee shall require an unqualified release of any right of
9 action against the State and the employee for acts within the
10 scope of the employee's employment giving rise to the claim.

11 Whenever and to the extent that a State employee operates
12 a motor vehicle or engages in other activity covered by
13 self-insurance under this Section, the State of Illinois
14 shall defend, indemnify, and hold harmless the employee
15 against any claim in tort filed against the employee for acts
16 or omissions within the scope of the employee's employment in
17 any proper judicial forum and not settled pursuant to this
18 subdivision (11), provided that this obligation of the State
19 of Illinois shall not exceed a maximum liability of
20 \$2,000,000 for any single occurrence in connection with the
21 operation of a motor vehicle or \$100,000 per person per
22 occurrence for any other single occurrence, or \$500,000 for
23 any single occurrence in connection with the provision of
24 medical care by a licensed physician employee.

25 Any claims against the State of Illinois under a
26 self-insurance plan that are not settled pursuant to this
27 subdivision (11) shall be heard and determined by the Court
28 of Claims and may not be filed or adjudicated in any other
29 forum. The Attorney General of the State of Illinois or the
30 Attorney General's designee shall be the attorney with
31 respect to all public liability self-insurance claims that
32 are not settled pursuant to this subdivision (11) and
33 therefore result in litigation. The payment of any award of
34 the Court of Claims entered against the State relating to any

1 public liability self-insurance claim shall act as a release
2 against any State employee involved in the occurrence.

3 (12) Administer a plan the purpose of which is to make
4 payments on final settlements or final judgments in
5 accordance with the State Employee Indemnification Act. The
6 plan shall be funded through appropriations from the General
7 Revenue Fund specifically designated for that purpose, except
8 that indemnification expenses for employees of the Department
9 of Transportation, the Illinois State Police, and the
10 Secretary of State shall be paid from the Road Fund. The
11 term "employee" as used in this subdivision (12) has the same
12 meaning as under subsection (b) of Section 1 of the State
13 Employee Indemnification Act. Subject to sufficient
14 appropriation, the Director shall approve payment of any
15 claim presented to the Director that is supported by a final
16 settlement or final judgment when the Attorney General and
17 the chief officer of the public body against whose employee
18 the claim or cause of action is asserted certify to the
19 Director that the claim is in accordance with the State
20 Employee Indemnification Act and that they approve of the
21 payment. In no event shall an amount in excess of \$150,000
22 be paid from this plan to or for the benefit of any claimant.

23 (13) Administer a plan the purpose of which is to make
24 payments on final settlements or final judgments for employee
25 wage claims in situations where there was an appropriation
26 relevant to the wage claim, the fiscal year and lapse period
27 have expired, and sufficient funds were available to pay the
28 claim. The plan shall be funded through appropriations from
29 the General Revenue Fund specifically designated for that
30 purpose.

31 Subject to sufficient appropriation, the Director is
32 authorized to pay any wage claim presented to the Director
33 that is supported by a final settlement or final judgment
34 when the chief officer of the State agency employing the

1 claimant certifies to the Director that the claim is a valid
2 wage claim and that the fiscal year and lapse period have
3 expired. Payment for claims that are properly submitted and
4 certified as valid by the Director shall include interest
5 accrued at the rate of 7% per annum from the forty-fifth day
6 after the claims are received by the Department or 45 days
7 from the date on which the amount of payment is agreed upon,
8 whichever is later, until the date the claims are submitted
9 to the Comptroller for payment. When the Attorney General has
10 filed an appearance in any proceeding concerning a wage claim
11 settlement or judgment, the Attorney General shall certify to
12 the Director that the wage claim is valid before any payment
13 is made. In no event shall an amount in excess of \$150,000
14 be paid from this plan to or for the benefit of any claimant.

15 Nothing in Public Act 84-961 shall be construed to affect
16 in any manner the jurisdiction of the Court of Claims
17 concerning wage claims made against the State of Illinois.

18 (14) Prepare and, in the discretion of the Director,
19 implement a program for self-insurance for official fidelity
20 and surety bonds for officers and employees as authorized by
21 the Official Bond Act.

22 (Source: P.A. 91-239, eff. 1-1-00.)