



Sen. William R. Haine

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LRB093 14813 WGH 51983 a

1 AMENDMENT TO HOUSE BILL 4847

2 AMENDMENT NO. _____. Amend House Bill 4847 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) Illinois is in the midst of a medical malpractice
8 insurance crisis of unprecedented magnitude; and

9 (2) Illinois is among the states with the highest medical
10 malpractice insurance premiums in the nation; and

11 (3) Medical malpractice insurance in Illinois is
12 unavailable or unaffordable for many hospitals and physicians;
13 and

14 (4) The high and increasing cost of medical malpractice
15 insurance in Illinois is causing health care providers to
16 eliminate or reduce the provision of medical care throughout
17 the State; and

18 (5) The crisis is discouraging medical students from
19 choosing Illinois as the place they will receive their medical
20 education and practice medicine; and

21 (6) The increase in medical malpractice liability
22 insurance rates is forcing physicians to practice medicine
23 without professional liability insurance, to leave Illinois,
24 to not perform high-risk procedures, or to retire early from

1 the practice of medicine; and

2 (7) The high and increasing cost of medical malpractice
3 insurance is due in large part to the inefficiency and
4 unpredictability of adjudicating claims through the civil
5 justice system; and

6 (8) Much of this inefficiency stems from the time and
7 resources needlessly spent on valuing uncertain and
8 unpredictable claims of medical negligence; and

9 (9) The public would benefit by making medical liability
10 coverage for hospitals and physicians more affordable, which
11 would make health care more available; and

12 (10) This health care crisis, which endangers the public
13 health, safety, and welfare of the citizens of Illinois,
14 requires drastic reforms to the civil justice system currently
15 endangering access to the necessary health care for citizens of
16 Illinois.

17 ARTICLE 2. RISK RETENTION ARRANGEMENTS

18 Section 201. Findings and purpose.

19 (a) In order to provide an alternative to the private
20 insurance market to cover medical malpractice risks, it is the
21 finding of the General Assembly that counties in the State may
22 find it necessary to seek to protect the public health, safety,
23 and welfare by providing an alternative source of insurance or
24 self-insurance for physicians practicing medicine and their
25 personnel within that county, and that providing such an
26 alternative source is in the public interest and serves a
27 public purpose.

28 (b) A program to provide a stable and ongoing source of
29 professional liability coverage for physicians and their
30 personnel through an insurance or self-insurance trust, under
31 the direction and control of a county or counties, will operate
32 for the protection of the public health, safety, and welfare

1 and serve a paramount public interest and purpose of the county
2 or counties.

3 Section 205. The Open Meetings Act is amended by changing
4 Section 2 as follows:

5 (5 ILCS 120/2) (from Ch. 102, par. 42)

6 Sec. 2. Open meetings.

7 (a) Openness required. All meetings of public bodies shall
8 be open to the public unless excepted in subsection (c) and
9 closed in accordance with Section 2a.

10 (b) Construction of exceptions. The exceptions contained
11 in subsection (c) are in derogation of the requirement that
12 public bodies meet in the open, and therefore, the exceptions
13 are to be strictly construed, extending only to subjects
14 clearly within their scope. The exceptions authorize but do not
15 require the holding of a closed meeting to discuss a subject
16 included within an enumerated exception.

17 (c) Exceptions. A public body may hold closed meetings to
18 consider the following subjects:

19 (1) The appointment, employment, compensation,
20 discipline, performance, or dismissal of specific
21 employees of the public body or legal counsel for the
22 public body, including hearing testimony on a complaint
23 lodged against an employee of the public body or against
24 legal counsel for the public body to determine its
25 validity.

26 (2) Collective negotiating matters between the public
27 body and its employees or their representatives, or
28 deliberations concerning salary schedules for one or more
29 classes of employees.

30 (3) The selection of a person to fill a public office,
31 as defined in this Act, including a vacancy in a public
32 office, when the public body is given power to appoint

1 under law or ordinance, or the discipline, performance or
2 removal of the occupant of a public office, when the public
3 body is given power to remove the occupant under law or
4 ordinance.

5 (4) Evidence or testimony presented in open hearing, or
6 in closed hearing where specifically authorized by law, to
7 a quasi-adjudicative body, as defined in this Act, provided
8 that the body prepares and makes available for public
9 inspection a written decision setting forth its
10 determinative reasoning.

11 (5) The purchase or lease of real property for the use
12 of the public body, including meetings held for the purpose
13 of discussing whether a particular parcel should be
14 acquired.

15 (6) The setting of a price for sale or lease of
16 property owned by the public body.

17 (7) The sale or purchase of securities, investments, or
18 investment contracts.

19 (8) Security procedures and the use of personnel and
20 equipment to respond to an actual, a threatened, or a
21 reasonably potential danger to the safety of employees,
22 students, staff, the public, or public property.

23 (9) Student disciplinary cases.

24 (10) The placement of individual students in special
25 education programs and other matters relating to
26 individual students.

27 (11) Litigation, when an action against, affecting or
28 on behalf of the particular public body has been filed and
29 is pending before a court or administrative tribunal, or
30 when the public body finds that an action is probable or
31 imminent, in which case the basis for the finding shall be
32 recorded and entered into the minutes of the closed
33 meeting.

34 (12) The establishment of reserves or settlement of

1 claims as provided in the Local Governmental and
2 Governmental Employees Tort Immunity Act, if otherwise the
3 disposition of a claim or potential claim might be
4 prejudiced, or the review or discussion of claims, loss or
5 risk management information, records, data, advice or
6 communications from or with respect to any insurer of the
7 public body or any intergovernmental risk management
8 association or self insurance pool of which the public body
9 is a member.

10 (13) Conciliation of complaints of discrimination in
11 the sale or rental of housing, when closed meetings are
12 authorized by the law or ordinance prescribing fair housing
13 practices and creating a commission or administrative
14 agency for their enforcement.

15 (14) Informant sources, the hiring or assignment of
16 undercover personnel or equipment, or ongoing, prior or
17 future criminal investigations, when discussed by a public
18 body with criminal investigatory responsibilities.

19 (15) Professional ethics or performance when
20 considered by an advisory body appointed to advise a
21 licensing or regulatory agency on matters germane to the
22 advisory body's field of competence.

23 (16) Self evaluation, practices and procedures or
24 professional ethics, when meeting with a representative of
25 a statewide association of which the public body is a
26 member.

27 (17) The recruitment, credentialing, discipline or
28 formal peer review of physicians or other health care
29 professionals for a hospital, or other institution
30 providing medical care, that is operated by the public
31 body.

32 (18) Deliberations for decisions of the Prisoner
33 Review Board.

34 (19) Review or discussion of applications received

1 under the Experimental Organ Transplantation Procedures
2 Act.

3 (20) The classification and discussion of matters
4 classified as confidential or continued confidential by
5 the State Employees Suggestion Award Board.

6 (21) Discussion of minutes of meetings lawfully closed
7 under this Act, whether for purposes of approval by the
8 body of the minutes or semi-annual review of the minutes as
9 mandated by Section 2.06.

10 (22) Deliberations for decisions of the State
11 Emergency Medical Services Disciplinary Review Board.

12 (23) The operation by a municipality of a municipal
13 utility or the operation of a municipal power agency or
14 municipal natural gas agency when the discussion involves
15 (i) contracts relating to the purchase, sale, or delivery
16 of electricity or natural gas or (ii) the results or
17 conclusions of load forecast studies.

18 (24) Meetings of a residential health care facility
19 resident sexual assault and death review team or the
20 Residential Health Care Facility Resident Sexual Assault
21 and Death Review Teams Executive Council under the
22 Residential Health Care Facility Resident Sexual Assault
23 and Death Review Team Act.

24 (25) The establishment of reserves administration,
25 adjudication, or settlement of claims as provided in
26 Article XLV of the Illinois Insurance Code if otherwise the
27 disposition of a claim or potential claim might be
28 prejudiced, or the review or discussion of claims, loss or
29 risk management information, records, data, advice or
30 communications from or with respect to any self-insurance
31 trust administration or adjudication of any claim, or
32 insurer created by the public body.

33 (d) Definitions. For purposes of this Section:

34 "Employee" means a person employed by a public body whose

1 relationship with the public body constitutes an
2 employer-employee relationship under the usual common law
3 rules, and who is not an independent contractor.

4 "Public office" means a position created by or under the
5 Constitution or laws of this State, the occupant of which is
6 charged with the exercise of some portion of the sovereign
7 power of this State. The term "public office" shall include
8 members of the public body, but it shall not include
9 organizational positions filled by members thereof, whether
10 established by law or by a public body itself, that exist to
11 assist the body in the conduct of its business.

12 "Quasi-adjudicative body" means an administrative body
13 charged by law or ordinance with the responsibility to conduct
14 hearings, receive evidence or testimony and make
15 determinations based thereon, but does not include local
16 electoral boards when such bodies are considering petition
17 challenges.

18 (e) Final action. No final action may be taken at a closed
19 meeting. Final action shall be preceded by a public recital of
20 the nature of the matter being considered and other information
21 that will inform the public of the business being conducted.

22 (Source: P.A. 93-57, eff. 7-1-03; 93-79, eff. 7-2-03; 93-422,
23 eff. 8-5-03; 93-577, eff. 8-21-03; revised 9-8-03)

24 Section 210. The Counties Code is amended by changing
25 Section 5-1005 and by adding Division 6-34 as follows:

26 (55 ILCS 5/5-1005) (from Ch. 34, par. 5-1005)

27 Sec. 5-1005. Powers. Each county shall have power:

28 1. To purchase and hold the real and personal estate
29 necessary for the uses of the county, and to purchase and hold,
30 for the benefit of the county, real estate sold by virtue of
31 judicial proceedings in which the county is plaintiff.

32 2. To sell and convey or lease any real or personal estate

1 owned by the county.

2 3. To make all contracts and do all other acts in relation
3 to the property and concerns of the county necessary to the
4 exercise of its corporate powers.

5 4. To take all necessary measures and institute proceedings
6 to enforce all laws for the prevention of cruelty to animals.

7 5. To purchase and hold or lease real estate upon which may
8 be erected and maintained buildings to be utilized for purposes
9 of agricultural experiments and to purchase, hold and use
10 personal property for the care and maintenance of such real
11 estate in connection with such experimental purposes.

12 6. To cause to be erected, or otherwise provided, suitable
13 buildings for, and maintain a county hospital and necessary
14 branch hospitals and/or a county sheltered care home or county
15 nursing home for the care of such sick, chronically ill or
16 infirm persons as may by law be proper charges upon the county,
17 or upon other governmental units, and to provide for the
18 management of the same. The county board may establish rates to
19 be paid by persons seeking care and treatment in such hospital
20 or home in accordance with their financial ability to meet such
21 charges, either personally or through a hospital plan or
22 hospital insurance, and the rates to be paid by governmental
23 units, including the State, for the care of sick, chronically
24 ill or infirm persons admitted therein upon the request of such
25 governmental units. Any hospital maintained by a county under
26 this Section is authorized to provide any service and enter
27 into any contract or other arrangement not prohibited for a
28 hospital that is licensed under the Hospital Licensing Act,
29 incorporated under the General Not-For-Profit Corporation Act,
30 and exempt from taxation under paragraph (3) of subsection (c)
31 of Section 501 of the Internal Revenue Code.

32 7. To contribute such sums of money toward erecting,
33 building, maintaining, and supporting any non-sectarian public
34 hospital located within its limits as the county board of the

1 county shall deem proper.

2 8. To purchase and hold real estate for the preservation of
3 forests, prairies and other natural areas and to maintain and
4 regulate the use thereof.

5 9. To purchase and hold real estate for the purpose of
6 preserving historical spots in the county, to restore, maintain
7 and regulate the use thereof and to donate any historical spot
8 to the State.

9 10. To appropriate funds from the county treasury to be
10 used in any manner to be determined by the board for the
11 suppression, eradication and control of tuberculosis among
12 domestic cattle in such county.

13 11. To take all necessary measures to prevent forest fires
14 and encourage the maintenance and planting of trees and the
15 preservation of forests.

16 12. To authorize the closing on Saturday mornings of all
17 offices of all county officers at the county seat of each
18 county, and to otherwise regulate and fix the days and the
19 hours of opening and closing of such offices, except when the
20 days and the hours of opening and closing of the office of any
21 county officer are otherwise fixed by law; but the power herein
22 conferred shall not apply to the office of State's Attorney and
23 the offices of judges and clerks of courts and, in counties of
24 500,000 or more population, the offices of county clerk.

25 13. To provide for the conservation, preservation and
26 propagation of insectivorous birds through the expenditure of
27 funds provided for such purpose.

28 14. To appropriate funds from the county treasury and
29 expend the same for care and treatment of tuberculosis
30 residents.

31 15. In counties having less than 1,000,000 inhabitants, to
32 take all necessary or proper steps for the extermination of
33 mosquitoes, flies or other insects within the county.

34 16. To install an adequate system of accounts and financial

1 records in the offices and divisions of the county, suitable to
2 the needs of the office and in accordance with generally
3 accepted principles of accounting for governmental bodies,
4 which system may include such reports as the county board may
5 determine.

6 17. To purchase and hold real estate for the construction
7 and maintenance of motor vehicle parking facilities for persons
8 using county buildings, but the purchase and use of such real
9 estate shall not be for revenue producing purposes.

10 18. To acquire and hold title to real property located
11 within the county, or partly within and partly outside the
12 county by dedication, purchase, gift, legacy or lease, for park
13 and recreational purposes and to charge reasonable fees for the
14 use of or admission to any such park or recreational area and
15 to provide police protection for such park or recreational
16 area. Personnel employed to provide such police protection
17 shall be conservators of the peace within such park or
18 recreational area and shall have power to make arrests on view
19 of the offense or upon warrants for violation of any of the
20 ordinances governing such park or recreational area or for any
21 breach of the peace in the same manner as the police in
22 municipalities organized and existing under the general laws of
23 the State. All such real property outside the county shall be
24 contiguous to the county and within the boundaries of the State
25 of Illinois.

26 19. To appropriate funds from the county treasury to be
27 used to provide supportive social services designed to prevent
28 the unnecessary institutionalization of elderly residents, or,
29 for operation of, and equipment for, senior citizen centers
30 providing social services to elderly residents.

31 20. To appropriate funds from the county treasury and loan
32 such funds to a county water commission created under the
33 "Water Commission Act", approved June 30, 1984, as now or
34 hereafter amended, in such amounts and upon such terms as the

1 county may determine or the county and the commission may
2 agree. The county shall not under any circumstances be
3 obligated to make such loans. The county shall not be required
4 to charge interest on any such loans.

5 21. To establish an independent entity to administer a
6 medical care risk retention trust program, to contribute such
7 sums of money to the risk retention trust program as the county
8 board of the county shall deem proper to operate the medical
9 care risk retention trust program, to establish uniform
10 eligibility requirements for participation in the risk
11 retention trust program, to appoint an administrator of the
12 risk retention trust program, to charge premiums, to establish
13 a billing procedure to collect premiums, and to ensure timely
14 administration and adjudication of claims under the program. A
15 single medical care risk retention trust program may be
16 established jointly by more than one county, in accordance with
17 an agreement between the participating counties, if at least
18 one of the participating counties has a population of 200,000
19 or more according to the most recent federal decennial census.

20 All contracts for the purchase of coal under this Section
21 shall be subject to the provisions of "An Act concerning the
22 use of Illinois mined coal in certain plants and institutions",
23 filed July 13, 1937, as amended.

24 (Source: P.A. 86-962; 86-1028.)

25 (55 ILCS 5/Div. 6-34 heading new)

26 Division 6-34. Funding for health care financing programs

27 (55 ILCS 5/6-34001 new)

28 Sec. 6-34001. Authorization. The county board of any county
29 with a population of 200,000 or more according to the most
30 recent federal decennial census (and a county with a population
31 of less than 200,000 according to the most recent federal
32 decennial census if that county is participating in a single

1 trust program with one or more other counties in accordance
2 with the requirements of paragraph (21) of Section 5-1005 of
3 this Code) may, upon finding such action necessary for
4 protection of the public health, safety, and welfare, incur an
5 indebtedness by the establishment of lines or letters of credit
6 or issue general obligation or revenue bonds for the purpose of
7 ensuring the availability of and improving hospital, medical,
8 and health services as authorized under paragraph (21) of
9 Section 5-1005 of this Code.

10 (55 ILCS 5/6-34002 new)

11 Sec. 6-34002. Bonds. The bonds authorized in Section
12 6-34001 shall be issued in such denominations, be for such term
13 or terms, and bear interest at such rate as may be specified in
14 the resolution of the county board authorizing the issuance of
15 those bonds.

16 Section 215. The Illinois Insurance Code is amended by
17 adding Article XLV as follows:

18 (215 ILCS 5/Art. XLV heading new)

19 Article XLV. COUNTY RISK RETENTION ARRANGEMENTS
20 FOR THE PROVISION OF MEDICAL MALPRACTICE INSURANCE

21 (215 ILCS 5/1501 new)

22 Sec. 1501. Scope of Article. This Article applies only to
23 trusts sponsored by counties and organized under this Article
24 to provide medical malpractice insurance authorized under
25 paragraph (21) of Section 5-1005 of the Counties Code for
26 physicians and health care professionals providing medical
27 care and health care within the county's limits. In the case of
28 a single trust sponsored and organized by more than one county
29 in accordance with the requirements of paragraph (21) of
30 Section 5-1005 of the Counties Code, the powers and duties of a

1 county under this Article shall be exercised jointly by the
2 counties participating in the trust program in accordance with
3 the agreement between the counties.

4 (215 ILCS 5/1502 new)

5 Sec. 1502. Definitions. As used in this Article:

6 "Risk retention trust" or "trust" means a risk retention
7 trust created under this Article.

8 "Trust sponsor" means a county that has created a risk
9 retention trust.

10 "Pool retention fund" means a separate fund maintained for
11 payment of first dollar claims, up to a specified amount per
12 claim ("specific retention") and up to an aggregate amount for
13 a 12-month period ("aggregate retention").

14 "Contingency reserve fund" means a separate fund
15 maintained for payment of claims in excess of the pool
16 retention fund amount.

17 "Coverage grant" means the document describing specific
18 coverages and terms of coverage that are provided by a risk
19 retention trust created under this Article.

20 "Licensed service company" means an entity licensed by the
21 Department to perform claims adjusting, loss control, and data
22 processing.

23 (215 ILCS 5/1503 new)

24 Sec. 1503. Name. The corporate name of any risk retention
25 trust shall not be the same as or deceptively similar to the
26 name of any domestic insurance company or of any foreign or
27 alien insurance company authorized to transact business in this
28 State.

29 (215 ILCS 5/1504 new)

30 Sec. 1504. Principal office place of business. The
31 principal office of any risk retention trust shall be located

1 in this State.

2 (215 ILCS 5/1505 new)

3 Sec. 1505. Creation.

4 (1) Any county with a population of 200,000 or more
5 according to the most recent federal decennial census may
6 create a risk retention trust for the pooling of risks to
7 provide professional liability coverage authorized under
8 paragraph (21) of Section 5-1005 of the Counties Code for its
9 physicians and health care professionals providing medical
10 care and related health care within the county's limits. A
11 single risk retention trust may also be created jointly by more
12 than one county in accordance with the requirements of
13 paragraph (21) of Section 5-1005 of the Counties Code. A trust
14 shall be administered by at least 3 trustees who may be
15 individuals or corporate trustees and are appointed by the
16 trust sponsor and who represent physicians who have agreed in
17 writing to participate in the trust.

18 (2) The trustees shall appoint a qualified licensed
19 administrator who shall administer the affairs of the risk
20 retention trust.

21 (3) The trustees shall retain a licensed service company to
22 perform claims adjusting, loss control, and data processing and
23 any other delegated administrative duties.

24 (4) The trust sponsor, the trustees, and the trust
25 administrator shall be fiduciaries of the trust.

26 (5) A trust shall be consummated by a written trust
27 agreement and shall be subject to the laws of this State
28 governing the creation and operation of trusts, to the extent
29 not inconsistent with this Article.

30 (215 ILCS 5/1506 new)

31 Sec. 1506. Participation.

32 (1) A physician or health care professional providing

1 medical care and related health care within the county's limits
2 may participate in a risk retention trust if the physician or
3 health care professional:

4 (a) meets the underwriting standards for acceptance
5 into the trust;

6 (b) files a written application for coverage, agreeing
7 to meet all of the membership conditions of the trust;

8 (c) provides medical care and related health care in
9 the county sponsoring the trust;

10 (d) agrees to meet the ongoing loss control provisions
11 and risk pooling arrangements set forth by the trust;

12 (e) pays premium contributions on a timely basis as
13 required; and

14 (f) pays predetermined annual required contributions
15 into the contingency reserve fund.

16 (2) A physician or health care professional accepted for
17 trust membership and participating in the trust is liable for
18 payment to the trust of the amount of his or her annual premium
19 contribution and his or her annual predetermined contingency
20 reserve fund contribution.

21 (215 ILCS 5/1507 new)

22 Sec. 1507. Coverage grants; payment of claims.

23 (1) A risk retention trust may not issue coverage grants
24 until it has established a contingency reserve fund in an
25 amount deemed appropriate by the trust and filed with the
26 Department of Insurance. A risk retention trust must have and
27 at all times maintain a pool retention fund or a line or letter
28 of credit at least equal to its unpaid liabilities as
29 determined by an independent actuary.

30 (2) Every coverage grant issued or delivered in this State
31 by a risk retention trust shall provide for the extent of the
32 liability of trust members to the extent that funds are needed
33 to pay a member's share of the depleted contingency reserve

1 fund needed to maintain the reserves required by this Section.

2 (3) All claims shall be paid first from the pool retention
3 fund. If that fund becomes depleted, any additional claims
4 shall be paid from the contingency reserve fund.

5 (215 ILCS 5/1508 new)

6 Sec. 1508. Applicable Illinois Insurance Code provisions.
7 Other than this Article, only Sections 155.19, 155.20, and
8 155.25 and subsections (a) through (c) of Section 155.18 of
9 this Code shall apply to county risk retention trusts. The
10 Director shall advise the county board of any determinations
11 made pursuant to subsection (b) of Section 155.18 of this Code.

12 (215 ILCS 5/1509 new)

13 Sec. 1509. Authorized investments. In addition to other
14 investments authorized by law, a risk retention trust with
15 assets of at least \$5,000,000 may invest in any combination of
16 the following:

17 (1) the common stocks listed on a recognized exchange
18 or market;

19 (2) stock and convertible debt investments, or
20 investment grade corporate bonds, in or issued by any
21 corporation, the book value of which may not exceed 5% of
22 the total intergovernmental risk management entity's
23 investment account at book value in which those securities
24 are held, determined as of the date of the investment,
25 provided that investments in the stock of any one
26 corporation may not exceed 5% of the total outstanding
27 stock of the corporation and that the investments in the
28 convertible debt of any one corporation may not exceed 5%
29 of the total amount of such debt that may be outstanding;

30 (3) the straight preferred stocks or convertible
31 preferred stocks and convertible debt securities issued or
32 guaranteed by a corporation whose common stock is listed on

1 a recognized exchange or market;

2 (4) mutual funds or commingled funds that meet the
3 following requirements:

4 (A) the mutual fund or commingled fund is managed
5 by an investment company as defined in and registered
6 under the federal Investment Company Act of 1940 and
7 registered under the Illinois Securities Law of 1953 or
8 an investment adviser as defined under the federal
9 Investment Advisers Act of 1940;

10 (B) the mutual fund has been in operation for at
11 least 5 years; and

12 (C) the mutual fund has total net assets of
13 \$150,000,000 or more;

14 (5) commercial grade real estate located in the State
15 of Illinois.

16 Any investment adviser retained by a trust must be a
17 fiduciary who has the power to manage, acquire, or dispose of
18 any asset of the trust and has acknowledged in writing that he
19 or she is a fiduciary with respect to the trust and that he or
20 she will adhere to all of the guidelines of the trust and is
21 one or more of the following:

22 (i) registered as an investment adviser under the
23 federal Investment Advisers Act of 1940;

24 (ii) registered as an investment adviser under the
25 Illinois Securities Law of 1953;

26 (iii) a bank as defined in the federal Investment
27 Advisers Act of 1940;

28 (iv) an insurance company authorized to transact
29 business in this State.

30 Nothing in this Section shall be construed to authorize a
31 risk retention trust to accept the deposit of public funds
32 except for trust risk retention purposes.

33 Section 220. The Local Governmental and Governmental

1 Employees Tort Immunity Act is amended by adding Section 6-111
2 as follows:

3 (745 ILCS 10/6-111 new)

4 Sec. 6-111. Medical care risk retention program. Neither a
5 local public entity nor a public employee is liable for an
6 injury resulting from the policy decision to establish a
7 medical care risk retention trust or from the operation,
8 management, or administration of, or payment of claims pursuant
9 to, a medical care risk retention trust under paragraph (21) of
10 Section 5-1005 of the Counties Code, unless the local public
11 entity or public employee is guilty of willful and wanton
12 conduct.

13 ARTICLE 3. AMENDATORY PROVISIONS

14 Section 301. The Regulatory Sunset Act is amended by
15 changing Section 4.17 and adding Section 4.25 as follows:

16 (5 ILCS 80/4.17)

17 Sec. 4.17. Acts repealed on January 1, 2007. The following
18 are repealed on January 1, 2007:

19 The Boiler and Pressure Vessel Repairer Regulation
20 Act.

21 The Structural Pest Control Act.

22 Articles II, III, IV, V, V 1/2, VI, VIIA, VIIB, VIIC,
23 XVII, XXXI, XXXI 1/4, and XXXI 3/4 of the Illinois
24 Insurance Code.

25 The Clinical Psychologist Licensing Act.

26 The Illinois Optometric Practice Act of 1987.

27 ~~The Medical Practice Act of 1987.~~

28 The Environmental Health Practitioner Licensing Act.

29 (Source: P.A. 92-837, eff. 8-22-02.)

1 (5 ILCS 80/4.25 new)

2 Sec. 4.25. Act repealed on January 1, 2015. The following
3 Act is repealed on January 1, 2015:

4 The Medical Practice Act of 1987.

5 Section 305. The Hospital Licensing Act is amended by
6 changing Section 10.2 as follows:

7 (210 ILCS 85/10.2) (from Ch. 111 1/2, par. 151.2)

8 Sec. 10.2. Liability.

9 (a) Because the candid and conscientious evaluation of
10 clinical practices is essential to the provision of adequate
11 hospital care, it is the policy of this State to encourage peer
12 review by health care providers. Therefore, no hospital and no
13 individual who is a member, agent, or employee of a hospital,
14 hospital medical staff, hospital administrative staff, or
15 hospital governing board shall be liable for civil damages as a
16 result of the acts, omissions, decisions, providing, sharing,
17 collecting, or obtaining information under subsection (b), or
18 any other conduct, except those involving wilful or wanton
19 misconduct, of a medical utilization committee, medical review
20 committee, patient care audit committee, medical care
21 evaluation committee, quality review committee, credential
22 committee, peer review committee, or any other committee or
23 individual whose purpose, directly or indirectly, is internal
24 quality control or medical study to reduce morbidity or
25 mortality, or for improving patient care within a hospital, or
26 the improving or benefiting of patient care and treatment,
27 whether within a hospital or not, or for the purpose of
28 professional discipline including institution of a summary
29 suspension in accordance with Section 10.4 of this Act and the
30 medical staff bylaws.

31 (b) Any hospital, through its employees or agents, may
32 share information regarding a member of its medical staff that

1 raises immediate patient safety concerns with any committees
2 listed in subsection (a), or hospital contact on behalf of a
3 committee, at any hospital, for the same purposes set forth in
4 subsection (a). Discussions between hospitals pursuant to this
5 Section shall not be available to the public and shall not be
6 discoverable or admissible in any judicial proceeding against a
7 hospital or health care professional. Nothing in this Section
8 precludes the discovery of factual information otherwise
9 available and obtained from eyewitnesses or other original
10 sources. Nor may a hospital protect otherwise discoverable
11 information by sharing it with another hospital pursuant to
12 this Section. A medical staff member shall be provided with a
13 complete copy of any information used to decide upon the staff
14 member's staff privileges or in any judicial review of such
15 decision.

16 (c) Nothing in this Section shall relieve any individual or
17 hospital from liability arising from treatment of a patient.
18 Any individual or hospital from liability arising from
19 treatment of a patient. For the purposes of this Section,
20 "wilful and wanton misconduct" means a course of action that
21 shows actual or deliberate intention to harm or that, if not
22 intentional, shows an utter indifference to or conscious
23 disregard for a person's own safety and the safety of others.

24 (Source: P.A. 91-448, eff. 8-6-99.)

25 Section 310. The Illinois Insurance Code is amended by
26 changing Sections 155.18, 155.19, and 1204 and by adding
27 Section 155.18a as follows:

28 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

29 Sec. 155.18. (a) This Section shall apply to insurance on
30 risks based upon negligence by a physician, hospital or other
31 health care provider, referred to herein as medical liability
32 insurance. This Section shall not apply to contracts of

1 reinsurance, nor to any farm, county, district or township
2 mutual insurance company transacting business under an Act
3 entitled "An Act relating to local mutual district, county and
4 township insurance companies", approved March 13, 1936, as now
5 or hereafter amended, nor to any such company operating under a
6 special charter.

7 (b) The following standards shall apply to the making and
8 use of rates pertaining to all classes of medical liability
9 insurance:

10 (1) Rates shall not be excessive or inadequate, as
11 herein defined, nor shall they be unfairly discriminatory.
12 No rate shall be held to be excessive unless such rate is
13 unreasonably high for the insurance provided, ~~and a~~
14 ~~reasonable degree of competition does not exist in the area~~
15 ~~with respect to the classification to which such rate is~~
16 ~~applicable.~~

17 No rate shall be held inadequate unless it is
18 unreasonably low for the insurance provided ~~and continued~~
19 ~~use of it would endanger solvency of the company.~~

20 (2) Consideration shall be given, to the extent
21 applicable, to past and prospective loss experience within
22 and outside this State, to a reasonable margin for
23 underwriting profit and contingencies, to past and
24 prospective expenses both countrywide and those especially
25 applicable to this State, and to all other factors,
26 including judgment factors, deemed relevant within and
27 outside this State.

28 Consideration may also be given in the making and use
29 of rates to dividends, savings or unabsorbed premium
30 deposits allowed or returned by companies to their
31 policyholders, members or subscribers.

32 (3) The systems of expense provisions included in the
33 rates for use by any company or group of companies may
34 differ from those of other companies or groups of companies

1 to reflect the operating methods of any such company or
2 group with respect to any kind of insurance, or with
3 respect to any subdivision or combination thereof.

4 (4) Risks may be grouped by classifications for the
5 establishment of rates and minimum premiums.
6 Classification rates may be modified to produce rates for
7 individual risks in accordance with rating plans which
8 establish standards for measuring variations in hazards or
9 expense provisions, or both. Such standards may measure any
10 difference among risks that have a probable effect upon
11 losses or expenses. Such classifications or modifications
12 of classifications of risks may be established based upon
13 size, expense, management, individual experience, location
14 or dispersion of hazard, or any other reasonable
15 considerations and shall apply to all risks under the same
16 or substantially the same circumstances or conditions. The
17 rate for an established classification should be related
18 generally to the anticipated loss and expense factors of
19 the class.

20 (c) Every company writing medical liability insurance
21 shall file with the Director of Insurance the rates and rating
22 schedules it uses for medical liability insurance.

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

27 (2) For the purposes of this Section, any change in
28 premium to the company's insureds as a result of a change
29 in the company's base rates or a change in its increased
30 limits factors shall constitute a change in rates and shall
31 require a filing with the Director.

32 (3) It shall be certified in such filing by an officer
33 of the company and a qualified actuary that the company's
34 rates are based on sound actuarial principles and are not

1 inconsistent with the company's experience.

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

4 (1) that any rate, rating plan or rating system
5 violates the provisions of this Section applicable to it,
6 he shall ~~may~~ issue an order to the company which has been
7 the subject of the hearing specifying in what respects such
8 violation exists and may prohibit ~~stating when, within a~~
9 ~~reasonable period of time,~~ the further use of such rate or
10 rating system by such company in contracts of insurance
11 ~~made thereafter shall be prohibited;~~

12 (2) that the violation of any of the provisions of this
13 Section ~~applicable to it~~ by any company which has been the
14 subject of the hearing was wilful or that any company has
15 repeatedly violated any provision of this Section, he may
16 take either or both of the following actions:

17 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
18 the certificate of authority of such company with
19 respect to the class of insurance which has been the
20 subject of the hearing.

21 (B) Impose a penalty of up to \$1,000 against the
22 company for each violation. Each day during which a
23 violation occurs constitutes a separate violation.

24 (e) Every company writing medical liability insurance in
25 this State shall offer to each of its medical liability
26 insureds the option to make premium payments in at least
27 quarterly installments as prescribed by and filed with the
28 Director. This offer shall be included in the initial offer or
29 in the first policy renewal occurring on or after January 1,
30 2005.

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

32 (215 ILCS 5/155.18a new)

33 Sec. 155.18a. Professional Liability Insurance Resource

1 Center. The Director of Insurance shall establish a
2 Professional Liability Insurance Resource Center on the World
3 Wide Web containing the names and telephone numbers of all
4 licensed companies providing medical liability insurance and
5 producers who sell medical liability insurance. Each company
6 and producer shall submit the information to the Department on
7 or before September 30 of each year in order to be listed on
8 the website. The Department is under no obligation to list a
9 company or producer on the website. Hyperlinks to company
10 websites shall be included, if available. The publication of
11 the information on the Department's website shall commence on
12 January 1, 2005. The Department shall update the information on
13 the Professional Liability Insurance Resource Center at least
14 annually.

15 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

16 Sec. 155.19. All claims filed after December 31, 1976 with
17 any insurer and all suits filed after December 31, 1976 in any
18 court in this State, alleging liability on the part of any
19 physician, hospital or other health care provider for medically
20 related injuries, shall be reported to the Director of
21 Insurance in such form and under such terms and conditions as
22 may be prescribed by the Director. Notwithstanding any other
23 provision of law to the contrary, any insurer, stop loss
24 insurer, captive insurer, risk retention group, county risk
25 retention trust, religious or charitable risk pooling trust,
26 surplus line insurer, or other entity authorized or permitted
27 by law to provide medical liability insurance in this State
28 shall report to the Director, in such form and under such terms
29 and conditions as may be prescribed by the Director, all claims
30 filed after December 31, 2004 and all suits filed after
31 December 31, 2004 in any court in this State alleging liability
32 on the part of any physician, hospital, or health care provider
33 for medically-related injuries. Each clerk of the circuit court

1 shall provide to the Director such information as the Director
2 may deem necessary to verify the accuracy and completeness of
3 reports made to the Director under this Section. The Director
4 shall maintain complete and accurate records of all such claims
5 and suits including their nature, amount, disposition and other
6 information as he may deem useful or desirable in observing and
7 reporting on health care provider liability trends in this
8 State. The Director shall release to appropriate disciplinary
9 and licensing agencies any such data or information which may
10 assist such agencies in improving the quality of health care or
11 which may be useful to such agencies for the purpose of
12 professional discipline.

13 With due regard for appropriate maintenance of the
14 confidentiality thereof, the Director shall ~~may~~ release, on an
15 annual basis, from time to time to the Governor, the General
16 Assembly and the general public statistical reports based on
17 such data and information.

18 If the Director finds that any entity required to report
19 information in its possession under this Section has violated
20 any provision of this Section by filing late, incomplete, or
21 inaccurate reports, the Director may fine the entity up to
22 \$1,000 for each offense. Each day during which a violation
23 occurs constitutes a separate offense.

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

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

27 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

28 Sec. 1204. (A) The Director shall promulgate rules and
29 regulations which shall require each insurer licensed to write
30 property or casualty insurance in the State and each syndicate
31 doing business on the Illinois Insurance Exchange to record and
32 report its loss and expense experience and other data as may be
33 necessary to assess the relationship of insurance premiums and

1 related income as compared to insurance costs and expenses. The
2 Director may designate one or more rate service organizations
3 or advisory organizations to gather and compile such experience
4 and data. The Director shall require each insurer licensed to
5 write property or casualty insurance in this State and each
6 syndicate doing business on the Illinois Insurance Exchange to
7 submit a report, on a form furnished by the Director, showing
8 its direct writings in this State and companywide.

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

12 (1) Political subdivision liability insurance reported
13 separately in the following categories:

14 (a) municipalities;

15 (b) school districts;

16 (c) other political subdivisions;

17 (2) Public official liability insurance;

18 (3) Dram shop liability insurance;

19 (4) Day care center liability insurance;

20 (5) Labor, fraternal or religious organizations
21 liability insurance;

22 (6) Errors and omissions liability insurance;

23 (7) Officers and directors liability insurance
24 reported separately as follows:

25 (a) non-profit entities;

26 (b) for-profit entities;

27 (8) Products liability insurance;

28 (9) Medical malpractice insurance;

29 (10) Attorney malpractice insurance;

30 (11) Architects and engineers malpractice insurance;

31 and

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

34 (a) motor vehicle physical damage insurance;

1 (b) motor vehicle liability insurance.

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

6 (1) Direct premiums written;

7 (2) Direct premiums earned;

8 (3) Number of policies;

9 (4) Net investment income, using appropriate estimates
10 where necessary;

11 (5) Losses paid;

12 (6) Losses incurred;

13 (7) Loss reserves:

14 (a) Losses unpaid on reported claims;

15 (b) Losses unpaid on incurred but not reported
16 claims;

17 (8) Number of claims:

18 (a) Paid claims;

19 (b) Arising claims;

20 (9) Loss adjustment expenses:

21 (a) Allocated loss adjustment expenses;

22 (b) Unallocated loss adjustment expenses;

23 (10) Net underwriting gain or loss;

24 (11) Net operation gain or loss, including net
25 investment income;

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

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

29 (1) In addition to the other requirements of this
30 Section, all medical malpractice insurers shall include
31 the following information in the report required by
32 subsection (A) of this Section in such form and under such
33 terms and conditions as may be prescribed by the Director:

34 (a) paid and incurred losses by county for each of

1 the past 10 policy years; and

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

4 (2) All information collected by the Director under
5 paragraph (1) of this subsection (C-5) shall be made
6 available, on an aggregate basis, to the General Assembly
7 and the general public. This provision shall supersede any
8 other provision of law that may otherwise protect such
9 information from public disclosure as confidential. The
10 identity of the plaintiff, the defendant, the attorneys,
11 and the company shall not be disclosed.

12 (C-10) Additional information required from legal and
13 medical malpractice insurers.

14 (1) All legal and medical malpractice insurers shall
15 annually provide the Department with a copy of the
16 following:

17 (a) the company's reserve and surplus studies; and

18 (b) consulting actuarial report and data
19 supporting the company's rate filing.

20 (2) This information is deemed confidential trade
21 secrets and shall only be used for regulatory purposes.
22 This information may not be disclosed to any person by the
23 Department or any government official, employee, or agent.
24 Unlawful disclosure shall subject the disclosing person to
25 personal liability for damages and a fine of \$50,000 per
26 disclosure.

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

33 (E) Violations - Suspensions - Revocations.

34 (1) Any company or person subject to this Article, who

1 willfully or repeatedly fails to observe or who otherwise
2 violates any of the provisions of this Article or any rule
3 or regulation promulgated by the Director under authority
4 of this Article or any final order of the Director entered
5 under the authority of this Article shall by civil penalty
6 forfeit to the State of Illinois a sum not to exceed
7 \$2,000. Each day during which a violation occurs
8 constitutes a separate offense.

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

23 (3) No forfeiture liability under paragraph (1) of this
24 subsection may attach for any violation occurring more than
25 2 years prior to the date of issuance of the notice of
26 apparent liability and in no event may the total civil
27 penalty forfeiture imposed for the acts or omissions set
28 forth in any one notice of apparent liability exceed
29 \$100,000.

30 (4) All administrative hearings conducted pursuant to
31 this Article are subject to 50 Ill. Adm. Code 2402 and all
32 administrative hearings are subject to the Administrative
33 Review Law.

34 (5) The civil penalty forfeitures provided for in this

1 Section are payable to the General Revenue Fund of the
2 State of Illinois, and may be recovered in a civil suit in
3 the name of the State of Illinois brought in the Circuit
4 Court in Sangamon County or in the Circuit Court of the
5 county where the respondent is domiciled or has its
6 principal operating office.

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

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

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

1 obtained.

2 (9) No suspension or revocation under this Section may
3 become effective until 5 days from the date that the notice
4 of suspension or revocation has been personally delivered
5 or delivered by registered or certified mail to the company
6 or person. A suspension or revocation under this Section is
7 stayed upon the filing, by the company or person, of a
8 petition for judicial review under the Administrative
9 Review Law.

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

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

13 (225 ILCS 60/7) (from Ch. 111, par. 4400-7)

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

15 Sec. 7. Medical Disciplinary Board.

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

32 (B) Members of the Disciplinary Board shall be appointed

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

14 In making appointments the Governor shall attempt to insure
15 that the various social and geographic regions of the State of
16 Illinois are properly represented.

17 In making the designation of persons to act for the several
18 professions represented on the Disciplinary Board, the
19 Governor shall give due consideration to recommendations by
20 members of the respective professions and by organizations
21 therein.

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

27 (D) (Blank).

28 (E) Four voting members of the Disciplinary Board shall
29 constitute a quorum. A vacancy in the membership of the
30 Disciplinary Board shall not impair the right of a quorum to
31 exercise all the rights and perform all the duties of the
32 Disciplinary Board. Any action taken by the Disciplinary Board
33 under this Act may be authorized by resolution at any regular
34 or special meeting and each such resolution shall take effect

1 immediately. The Disciplinary Board shall meet at least
2 quarterly. The Disciplinary Board is empowered to adopt all
3 rules and regulations necessary and incident to the powers
4 granted to it under this Act.

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

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

28 The Director shall employ, in conformity with the Personnel
29 Code, not less than one full time investigator for every 2,500
30 ~~5000~~ physicians licensed in the State. Each investigator shall
31 be a college graduate with at least 2 years' investigative
32 experience or one year advanced medical education. Upon the
33 written request of the Disciplinary Board, the Director shall
34 employ, in conformity with the Personnel Code, such other

1 professional, technical, investigative, and clerical help,
2 either on a full or part-time basis as the Disciplinary Board
3 deems necessary for the proper performance of its duties.

4 (H) Upon the specific request of the Disciplinary Board,
5 signed by either the chairman, vice chairman, or a medical
6 coordinator of the Disciplinary Board, the Department of Human
7 Services or the Department of State Police shall make available
8 any and all information that they have in their possession
9 regarding a particular case then under investigation by the
10 Disciplinary Board.

11 (I) Members of the Disciplinary Board shall be immune from
12 suit in any action based upon any disciplinary proceedings or
13 other acts performed in good faith as members of the
14 Disciplinary Board.

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

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

30 (225 ILCS 60/22) (from Ch. 111, par. 4400-22)

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

32 Sec. 22. Disciplinary action.

33 (A) The Department may revoke, suspend, place on

1 probationary status, refuse to renew, or take any other
2 disciplinary action as the Department may deem proper with
3 regard to the license or visiting professor permit of any
4 person issued under this Act to practice medicine, or to treat
5 human ailments without the use of drugs and without operative
6 surgery upon any of the following grounds:

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

9 (a) a facility licensed pursuant to the Ambulatory
10 Surgical Treatment Center Act;

11 (b) an institution licensed under the Hospital
12 Licensing Act; or

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

20 (d) ambulatory surgical treatment centers,
21 hospitalization or care facilities maintained by the
22 Federal Government; or

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

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

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

1 to a felony charge.

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

3 (5) Engaging in dishonorable, unethical or
4 unprofessional conduct of a character likely to deceive,
5 defraud or harm the public.

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

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

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

14 (9) Fraud or misrepresentation in applying for, or
15 procuring, a license under this Act or in connection with
16 applying for renewal of a license under this Act.

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

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

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

31 (13) Violation of any provision of this Act or of the
32 Medical Practice Act prior to the repeal of that Act, or
33 violation of the rules, or a final administrative action of
34 the Director, after consideration of the recommendation of

1 the Disciplinary Board.

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

1 patient has full knowledge of the division, and, provided,
2 that the division is made in proportion to the services
3 performed and responsibility assumed by each.

4 (15) A finding by the Medical Disciplinary Board that
5 the registrant after having his or her license placed on
6 probationary status or subjected to conditions or
7 restrictions violated the terms of the probation or failed
8 to comply with such terms or conditions.

9 (16) Abandonment of a patient.

10 (17) Prescribing, selling, administering,
11 distributing, giving or self-administering any drug
12 classified as a controlled substance (designated product)
13 or narcotic for other than medically accepted therapeutic
14 purposes.

15 (18) Promotion of the sale of drugs, devices,
16 appliances or goods provided for a patient in such manner
17 as to exploit the patient for financial gain of the
18 physician.

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

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

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

32 (22) Wilful omission to file or record, or wilfully
33 impeding the filing or recording, or inducing another
34 person to omit to file or record, medical reports as

1 required by law, or wilfully failing to report an instance
2 of suspected abuse or neglect as required by law.

3 (23) Being named as a perpetrator in an indicated
4 report by the Department of Children and Family Services
5 under the Abused and Neglected Child Reporting Act, and
6 upon proof by clear and convincing evidence that the
7 licensee has caused a child to be an abused child or
8 neglected child as defined in the Abused and Neglected
9 Child Reporting Act.

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

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

20 (26) A pattern of practice or other behavior which
21 demonstrates incapacity or incompetence to practice under
22 this Act.

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

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

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

32 (30) Wilfully or negligently violating the
33 confidentiality between physician and patient except as
34 required by law.

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

4 (32) Aiding and abetting an individual not licensed
5 under this Act in the practice of a profession licensed
6 under this Act.

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

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

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

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

1 (37) Failure to transfer copies of medical records as
2 required by law.

3 (38) Failure to furnish the Department, its
4 investigators or representatives, relevant information,
5 legally requested by the Department after consultation
6 with the Chief Medical Coordinator or the Deputy Medical
7 Coordinator.

8 (39) Violating the Health Care Worker Self-Referral
9 Act.

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

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

14 (42) Entering into an excessive number of written
15 collaborative agreements with licensed advanced practice
16 nurses resulting in an inability to adequately collaborate
17 and provide medical direction.

18 (43) Repeated failure to adequately collaborate with
19 or provide medical direction to a licensed advanced
20 practice nurse.

21 Except for actions involving the ground numbered (26), all
22 ~~All~~ proceedings to suspend, revoke, place on probationary
23 status, or take any other disciplinary action as the Department
24 may deem proper, with regard to a license on any of the
25 foregoing grounds, must be commenced within 5 ~~3~~ years next
26 after receipt by the Department of a complaint alleging the
27 commission of or notice of the conviction order for any of the
28 acts described herein. Except for the grounds numbered (8),
29 (9), (26), and (29), no action shall be commenced more than 10
30 ~~5~~ years after the date of the incident or act alleged to have
31 violated this Section. For actions involving the ground
32 numbered (26), a pattern of practice or other behavior includes
33 any incident that occurred within 10 years before another
34 incident alleged to be part of the pattern of practice or other

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

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

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

1 the Illinois Department of Revenue.

2 The Department, upon the recommendation of the
3 Disciplinary Board, shall adopt rules which set forth standards
4 to be used in determining:

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

7 (b) what constitutes dishonorable, unethical or
8 unprofessional conduct of a character likely to deceive,
9 defraud, or harm the public;

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

14 (d) what constitutes gross negligence in the practice
15 of medicine.

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

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

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

31 An individual licensed under this Act, affected under this
32 Section, shall be afforded an opportunity to demonstrate to the
33 Disciplinary Board that they can resume practice in compliance
34 with acceptable and prevailing standards under the provisions

1 of their license.

2 The Department may promulgate rules for the imposition of
3 fines in disciplinary cases, not to exceed \$5,000 for each
4 violation of this Act. Fines may be imposed in conjunction with
5 other forms of disciplinary action, but shall not be the
6 exclusive disposition of any disciplinary action arising out of
7 conduct resulting in death or injury to a patient. Any funds
8 collected from such fines shall be deposited in the Medical
9 Disciplinary Fund.

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

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

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

1 (225 ILCS 60/23) (from Ch. 111, par. 4400-23)

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

3 Sec. 23. Reports relating to professional conduct and
4 capacity.

5 (A) Entities required to report.

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

1 than twice annually in order that the Disciplinary Board
2 shall have current information upon which to determine the
3 status of any such person. Such initial and periodic
4 reports of impaired physicians shall not be considered
5 records within the meaning of The State Records Act and
6 shall be disposed of, following a determination by the
7 Disciplinary Board that such reports are no longer
8 required, in a manner and at such time as the Disciplinary
9 Board shall determine by rule. The filing of such reports
10 shall be construed as the filing of a report for purposes
11 of subsection (C) of this Section.

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

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

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

1 State's Attorney of each county may report to the
2 Disciplinary Board through a verified complaint any
3 instance in which the State's Attorney believes that a
4 physician has willfully violated the notice requirements
5 of the Parental Notice of Abortion Act of 1995.

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

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

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

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

28 (3) The name and date of birth ~~or other means of~~
29 ~~identification~~ of any patient or patients whose treatment
30 is a subject of the report, if available, or other means of
31 identification if such information is not available,
32 identification of the hospital or other healthcare
33 facility where the care at issue in the report was
34 rendered, provided, however, no medical records may be

1 revealed ~~without the written consent of the patient or~~
2 ~~patients.~~

3 (4) A brief description of the facts which gave rise to
4 the issuance of the report, including the dates of any
5 occurrences deemed to necessitate the filing of the report.

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

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

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

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

27 Nothing contained in this Section shall act to in any way,
28 waive or modify the confidentiality of medical reports and
29 committee reports to the extent provided by law. Any
30 information reported or disclosed shall be kept for the
31 confidential use of the Disciplinary Board, the Medical
32 Coordinators, the Disciplinary Board's attorneys, the medical
33 investigative staff, and authorized clerical staff, as
34 provided in this Act, and shall be afforded the same status as

1 is provided information concerning medical studies in Part 21
2 of Article VIII of the Code of Civil Procedure, except that the
3 Department may disclose information and documents to a federal,
4 State, or local law enforcement agency pursuant to a subpoena
5 in an ongoing criminal investigation. Furthermore, information
6 and documents disclosed to a federal, State, or local law
7 enforcement agency may be used by that agency only for the
8 investigation and prosecution of a criminal offense.

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

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

34 Should the Attorney General decline representation, the

1 member shall have the right to employ counsel of his or her
2 choice, whose fees shall be provided by the State, after
3 approval by the Attorney General, unless there is a
4 determination by a court that the member's actions were not in
5 good faith or were wilful and wanton.

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

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

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

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

1 which the person was notified by the Disciplinary Board of the
2 existence of the original report.

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

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

19 Should the Disciplinary Board find that there are not
20 sufficient facts to warrant further investigation, or action,
21 the report shall be accepted for filing and the matter shall be
22 deemed closed and so reported to the Director. The Director
23 shall then have 30 days to accept the Medical Disciplinary
24 Board's decision or request further investigation. The
25 Director shall inform the Board in writing of the decision to
26 request further investigation, including the specific reasons
27 for the decision. The individual or entity filing the original
28 report or complaint and the person who is the subject of the
29 report or complaint shall be notified in writing by the
30 Director of any final action on their report or complaint.

31 (F) Summary reports. The Disciplinary Board shall prepare,
32 on a timely basis, but in no event less than one every other
33 month, a summary report of final actions taken upon
34 disciplinary files maintained by the Disciplinary Board. The

1 summary reports shall be sent by the Disciplinary Board to
2 every health care facility licensed by the Illinois Department
3 of Public Health, every professional association and society of
4 persons licensed under this Act functioning on a statewide
5 basis in this State, the American Medical Association, the
6 American Osteopathic Association, the American Chiropractic
7 Association, all insurers providing professional liability
8 insurance to persons licensed under this Act in the State of
9 Illinois, the Federation of State Medical Licensing Boards, and
10 the Illinois Pharmacists Association.

11 (G) Any violation of this Section shall be a Class A
12 misdemeanor.

13 (H) If any such person violates the provisions of this
14 Section an action may be brought in the name of the People of
15 the State of Illinois, through the Attorney General of the
16 State of Illinois, for an order enjoining such violation or for
17 an order enforcing compliance with this Section. Upon filing of
18 a verified petition in such court, the court may issue a
19 temporary restraining order without notice or bond and may
20 preliminarily or permanently enjoin such violation, and if it
21 is established that such person has violated or is violating
22 the injunction, the court may punish the offender for contempt
23 of court. Proceedings under this paragraph shall be in addition
24 to, and not in lieu of, all other remedies and penalties
25 provided for by this Section.

26 (Source: P.A. 89-18, eff. 6-1-95; 89-702, eff. 7-1-97; 90-699,
27 eff. 1-1-99.)

28 (225 ILCS 60/24) (from Ch. 111, par. 4400-24)

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

30 Sec. 24. Report of violations; medical associations. Any
31 physician licensed under this Act, the Illinois State Medical
32 Society, the Illinois Association of Osteopathic Physicians
33 and Surgeons, the Illinois Chiropractic Society, the Illinois

1 Prairie State Chiropractic Association, or any component
2 societies of any of these 4 groups, and any other person, may
3 report to the Disciplinary Board any information the physician,
4 association, society, or person may have that appears to show
5 that a physician is or may be in violation of any of the
6 provisions of Section 22 of this Act.

7 The Department may enter into agreements with the Illinois
8 State Medical Society, the Illinois Association of Osteopathic
9 Physicians and Surgeons, the Illinois Prairie State
10 Chiropractic Association, or the Illinois Chiropractic Society
11 to allow these organizations to assist the Disciplinary Board
12 in the review of alleged violations of this Act. Subject to the
13 approval of the Department, any organization party to such an
14 agreement may subcontract with other individuals or
15 organizations to assist in review.

16 Any physician, association, society, or person
17 participating in good faith in the making of a report, under
18 this Act or participating in or assisting with an investigation
19 or review under this Act ~~Section~~ shall have immunity from any
20 civil, criminal, or other liability that might result by reason
21 of those actions.

22 The medical information in the custody of an entity under
23 contract with the Department participating in an investigation
24 or review shall be privileged and confidential to the same
25 extent as are information and reports under the provisions of
26 Part 21 of Article VIII of the Code of Civil Procedure.

27 Upon request by the Department after a mandatory report has
28 been filed with the Department, an attorney for any party
29 seeking to recover damages for injuries or death by reason of
30 medical, hospital, or other healing art malpractice shall
31 provide patient records related to the physician involved in
32 the disciplinary proceeding to the Department within 30 days of
33 the Department's request for use by the Department in any
34 disciplinary matter under this Act. An attorney who provides

1 patient records to the Department in accordance with this
2 requirement shall not be deemed to have violated any
3 attorney-client privilege. Notwithstanding any other provision
4 of law, consent by a patient shall not be required for the
5 provision of patient records in accordance with this
6 requirement.

7 For the purpose of any civil or criminal proceedings, the
8 good faith of any physician, association, society or person
9 shall be presumed. The Disciplinary Board may request the
10 Illinois State Medical Society, the Illinois Association of
11 Osteopathic Physicians and Surgeons, the Illinois Prairie
12 State Chiropractic Association, or the Illinois Chiropractic
13 Society to assist the Disciplinary Board in preparing for or
14 conducting any medical competency examination as the Board may
15 deem appropriate.

16 (Source: P.A. 88-324.)

17 (225 ILCS 60/36) (from Ch. 111, par. 4400-36)

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

19 Sec. 36. Upon the motion of either the Department or the
20 Disciplinary Board or upon the verified complaint in writing of
21 any person setting forth facts which, if proven, would
22 constitute grounds for suspension or revocation under Section
23 22 of this Act, the Department shall investigate the actions of
24 any person, so accused, who holds or represents that they hold
25 a license. Such person is hereinafter called the accused.

26 The Department shall, before suspending, revoking, placing
27 on probationary status, or taking any other disciplinary action
28 as the Department may deem proper with regard to any license at
29 least 30 days prior to the date set for the hearing, notify the
30 accused in writing of any charges made and the time and place
31 for a hearing of the charges before the Disciplinary Board,
32 direct them to file their written answer thereto to the
33 Disciplinary Board under oath within 20 days after the service

1 on them of such notice and inform them that if they fail to
2 file such answer default will be taken against them and their
3 license may be suspended, revoked, placed on probationary
4 status, or have other disciplinary action, including limiting
5 the scope, nature or extent of their practice, as the
6 Department may deem proper taken with regard thereto.

7 Where a physician has been found, upon complaint and
8 investigation of the Department, and after hearing, to have
9 performed an abortion procedure in a wilful and wanton manner
10 upon a woman who was not pregnant at the time such abortion
11 procedure was performed, the Department shall automatically
12 revoke the license of such physician to practice medicine in
13 Illinois.

14 Such written notice and any notice in such proceedings
15 thereafter may be served by delivery of the same, personally,
16 to the accused person, or by mailing the same by registered or
17 certified mail to the address last theretofore specified by the
18 accused in their last notification to the Department.

19 All information gathered by the Department during its
20 investigation including information subpoenaed under Section
21 23 or 38 of this Act and the investigative file shall be kept
22 for the confidential use of the Director, Disciplinary Board,
23 the Medical Coordinators, persons employed by contract to
24 advise the Medical Coordinator or the Department, the
25 Disciplinary Board's attorneys, the medical investigative
26 staff, and authorized clerical staff, as provided in this Act
27 and shall be afforded the same status as is provided
28 information concerning medical studies in Part 21 of Article
29 VIII of the Code of Civil Procedure, except that the Department
30 may disclose information and documents to a federal, State, or
31 local law enforcement agency pursuant to a subpoena in an
32 ongoing criminal investigation. Furthermore, information and
33 documents disclosed to a federal, State, or local law
34 enforcement agency may be used by that agency only for the

1 investigation and prosecution of a criminal offense.

2 (Source: P.A. 90-699, eff. 1-1-99.)

3 Section 320. The Clerks of Courts Act is amended by adding
4 Section 27.10 as follows:

5 (705 ILCS 105/27.10 new)

6 Sec. 27.10. Director of Insurance. Each clerk of the
7 circuit court shall provide to the Director of Insurance such
8 information as the Director of Insurance requests under Section
9 155.19 of the Illinois Insurance Code.

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

12 (710 ILCS 15/8) (from Ch. 10, par. 208)

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

15 (a) The agreement is not a condition to the rendering of
16 health care services by any party and the agreement has been
17 executed by the recipient of health care services at the time
18 of the discharge planning process or at the time of discharge
19 after the last date of treatment ~~inception of or during the~~
20 ~~term of provision of services for a specific cause by either a~~
21 ~~health care provider or a hospital; and~~

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

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

29 (d) The agreement shall not limit, impair, or waive the
30 procedural rights to be heard, to present material evidence, to

1 cross-examine witnesses, and to be represented by an attorney,
2 or other procedural rights of due process of any party.

3 ~~(e) As a part of the discharge planning process the patient~~
4 ~~or, if appropriate, members of his family must be given a copy~~
5 ~~of the health care arbitration agreement previously executed by~~
6 ~~or for the patient and shall re affirm it.~~

7 Failure to comply with this provision during the discharge
8 planning process shall void the health care arbitration
9 agreement.

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

11 (710 ILCS 15/9) (from Ch. 10, par. 209)

12 Sec. 9. Mandatory Provisions.

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

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

21 ~~(c) Every health care arbitration agreement may be~~
22 ~~cancelled by any signatory (1) within 60 days of its execution~~
23 ~~or within 60 days of the date of the patient's discharge from~~
24 ~~the hospital, whichever is later, as to an agreement in~~
25 ~~relation to health care services rendered during~~
26 ~~hospitalization, provided, that if executed other than at the~~
27 ~~time of discharge of the patient from the hospital, the health~~
28 ~~care arbitration agreement be reaffirmed at the time of the~~
29 ~~discharge planning process in the same manner as provided for~~
30 ~~in the execution of the original agreement; or (2) within 60~~
31 ~~days of the date of its execution, or the last date of~~
32 ~~treatment by the health care provider, whichever is later, as~~
33 ~~to an agreement in relation to health care services not~~

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

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

22 "AGREEMENT TO ARBITRATE HEALTH CARE

23 NEGLIGENCE CLAIMS

24 NOTICE TO PATIENT

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

31 THIS AGREEMENT MAY BE CANCELLED WITHIN 120 ~~60~~ DAYS OF
32 SIGNING ~~OR 60 DAYS AFTER YOUR HOSPITAL DISCHARGE OR 60 DAYS~~
33 ~~AFTER YOUR LAST MEDICAL TREATMENT IN RELATION TO HEALTH~~
34 ~~CARE SERVICES NOT RENDERED 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 (Source: P.A. 91-156, eff. 1-1-00.)

13 Section 330. The Code of Civil Procedure is amended by
14 changing Sections 2-402, 2-622, 2-1107.1, 2-1109, 2-1702,
15 2-1704, 8-1901, and 8-2501 and by adding Sections 2-1105.01,
16 2-1720, and 2-1721 as follows:

17 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

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

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

26 Persons or entities so named as respondents in discovery
27 shall be required to respond to discovery by the plaintiff in
28 the same manner as are defendants and may, on motion of the
29 plaintiff, be added as defendants if the evidence discloses the
30 existence of probable cause for such action.

31 A person or entity named a respondent in discovery may upon
32 his or her own motion be made a defendant in the action, in

1 which case the provisions of this Section are no longer
2 applicable to that person.

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

5 Each respondent in discovery shall be paid expenses and
6 fees as provided for witnesses.

7 A person or entity named as a respondent in discovery in
8 any civil action may be made a defendant in the same action at
9 any time within 6 months after being named as a respondent in
10 discovery, even though the time during which an action may
11 otherwise be initiated against him or her may have expired
12 during such 6 month period. Extensions of this 6-month period
13 shall be permitted only for (i) a failure or refusal on the
14 part of the respondent to comply with timely filed discovery or
15 (ii) withdrawal of plaintiff's counsel. Only one extension from
16 the original 6-month period may be granted for up to 90 days at
17 the discretion of the court.

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

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

21 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

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

24 Sec. 2-622. Healing art malpractice.

25 (a) In any action, whether in tort, contract or otherwise,
26 in which the plaintiff seeks damages for injuries or death by
27 reason of medical, hospital, or other healing art malpractice,
28 the plaintiff's attorney or the plaintiff, if the plaintiff is
29 proceeding pro se, shall file an affidavit, attached to the
30 original and all copies of the complaint, declaring one of the
31 following:

32 1. That the affiant has consulted and reviewed the
33 facts of the case with a health professional who the

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

1 event, the written report ~~affidavit~~ must identify the
2 profession of the reviewing health professional. A copy of
3 the written report, clearly identifying the plaintiff and
4 the reasons for the reviewing health professional's
5 determination that a reasonable and meritorious cause for
6 the filing of the action exists, must be attached to the
7 affidavit, but information which would identify the
8 reviewing health professional may be deleted from the copy
9 so attached. The report must contain the affirmations set
10 forth in items (i) through (iv) of this paragraph 1. At the
11 first Supreme Court Rule 218 case management conference,
12 the plaintiff shall present to the court the original
13 signed health professional's report, along with a copy of
14 the consultant's current license and curriculum vitae, for
15 an in camera inspection. The court shall verify whether the
16 report and affidavit comply with the requirements of this
17 paragraph 1. The court, in verifying whether the report and
18 affidavit comply with the requirements of this paragraph 1,
19 shall determine whether the physician preparing the report
20 is qualified and the determination shall be either in
21 writing or transcribed. If the court finds that the report,
22 the consultant's current curriculum vitae, or the
23 affidavit is deficient, the court may request from the
24 plaintiff all documents it deems necessary to make its
25 decision and shall allow for a reasonable opportunity to
26 provide any requested documents and to amend that report or
27 affidavit; provided, if the statute of limitations has
28 tolled, the judge may grant only one extension not
29 exceeding 90 days. The court's verification as to whether
30 the physician preparing the report is qualified shall be
31 issued to all parties and be made a part of the official
32 record. The original report, the copy of the consultant's
33 current license and curriculum vitae, and any documents
34 requested by the court shall remain under seal and part of

1 the court record. Notwithstanding the other provisions of
2 this Section, the judge may disclose the name and address
3 of the reviewing health professional upon a showing of good
4 cause by the defendant challenging the qualifications of
5 the professional. If the information is disclosed, at the
6 trial level, then it shall be confidential and it shall not
7 be disclosed by the defendant to a third party.

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

21 3. That a request has been made by the plaintiff or his
22 attorney for examination and copying of records pursuant to
23 Part 20 of Article VIII of this Code and the party required
24 to comply under those Sections has failed to produce such
25 records within 60 days of the receipt of the request. If an
26 affidavit is executed pursuant to this paragraph, the
27 affidavit ~~certificate~~ and written report required by
28 paragraph 1 shall be filed within 90 days following receipt
29 of the requested records. All defendants except those whose
30 failure to comply with Part 20 of Article VIII of this Code
31 is the basis for an affidavit under this paragraph shall be
32 excused from answering or otherwise pleading until 30 days
33 after being served with the affidavit and report
34 ~~certificate~~ required by paragraph 1.

1 (b) Where an affidavit ~~a certificate~~ and written report are
2 required pursuant to this Section a separate affidavit
3 ~~certificate~~ and written report shall be filed as to each
4 defendant who has been named in the complaint and shall be
5 filed as to each defendant named at a later time.

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

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

21 (e) Allegations and denials in the affidavit, made without
22 reasonable cause and found to be untrue, shall subject the
23 party pleading them or his attorney, or both, to the payment of
24 reasonable expenses, actually incurred by the other party by
25 reason of the untrue pleading, together with reasonable
26 attorneys' fees to be summarily taxed by the court upon motion
27 made within 30 days of the judgment or dismissal. In no event
28 shall the award for attorneys' fees and expenses exceed those
29 actually paid by the moving party, including the insurer, if
30 any. In proceedings under this paragraph (e), the moving party
31 shall have the right to depose and examine any and all
32 reviewing health professionals who prepared reports used in
33 conjunction with an affidavit required by this Section.

34 (f) A reviewing health professional who in good faith

1 prepares a report used in conjunction with an affidavit
2 required by this Section shall have civil immunity from
3 liability which otherwise might result from the preparation of
4 such report.

5 (g) The failure of the plaintiff to file an affidavit and
6 report in compliance with ~~to file a certificate required by~~
7 this Section shall be grounds for dismissal with prejudice
8 under Section 2-619.

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

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

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

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

19 (735 ILCS 5/2-1105.01 new)

20 Sec. 2-1105.01. Personal assets protected in healing art
21 malpractice cases. In all cases, whether tort, contract, or
22 otherwise, in which the plaintiff seeks damages by reason of
23 medical healing art malpractice, the amount of the recovery
24 shall be limited to an amount that is covered by the
25 physician's medical malpractice insurance or liability
26 insurance provided the physician maintains at least a minimum
27 of \$1,000,000 in insurance coverage per occurrence and
28 \$3,000,000 in the aggregate. Corporate assets are subject to
29 attachment for satisfaction of a judgment. In no event shall a
30 physician be liable in an amount that would cause him or her to
31 forfeit any of his or her personal assets.

32 (735 ILCS 5/2-1107.1) (from Ch. 110, par. 2-1107.1)

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

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

4 (a) In all actions on account of bodily injury or death or
5 physical damage to property based on negligence, or product
6 liability based on strict tort liability, the court shall
7 instruct the jury in writing that the defendant shall be found
8 not liable if the jury finds that the contributory fault of the
9 plaintiff is more than 50% of the proximate cause of the injury
10 or damage for which recovery is sought.

11 (b) In all healing art malpractice actions, the court shall
12 instruct the jury in writing, to the extent that it is true,
13 that any award of compensatory damages will not be taxable
14 under federal or State income tax law.

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

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

19 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

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

22 Sec. 2-1109. Itemized verdicts.

23 (a) In every case where damages for bodily injury or death
24 ~~to the person~~ are assessed by the jury the verdict shall be
25 itemized so as to reflect the monetary distribution, if any,
26 among economic loss and non-economic loss, ~~if any,~~ and, in
27 healing art ~~medical~~ malpractice cases, further itemized so as
28 to reflect the distribution of economic loss by category, such
29 itemization of economic loss by category to include: (a)
30 amounts intended to compensate for reasonable expenses which
31 have been incurred, or which will be incurred, for necessary
32 medical, surgical, x-ray, dental, or other health or
33 rehabilitative services, drugs, and therapy; (b) amounts

1 intended to compensate for lost wages or loss of earning
2 capacity; and (c) all other economic losses claimed by the
3 plaintiff or granted by the jury. Each category of economic
4 loss shall be further itemized into amounts intended to
5 compensate for losses which have been incurred prior to the
6 verdict and amounts intended to compensate for future losses
7 ~~which will be incurred in the future.~~

8 (b) In all actions on account of bodily injury or death
9 based on negligence, including healing art malpractice
10 actions, the following terms have the following meanings:

11 (i) "Economic loss" or "economic damages" means all
12 damages that are tangible, such as damages for past and
13 future medical expenses, loss of income or earnings and
14 other property loss.

15 (ii) "Non-economic loss" or "non-economic damages"
16 means damages that are intangible, including but not
17 limited to damages for pain and suffering, disability,
18 disfigurement, loss of consortium, and loss of society.

19 (iii) "Compensatory damages" or "actual damages" are
20 the sum of economic and non-economic damages.

21 (c) Nothing in this Section shall be construed to create a
22 cause of action.

23 (d) This amendatory Act of the 93rd General Assembly
24 applies to causes of action filed on or after its effective
25 date.

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

27 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

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

30 Sec. 2-1702. Economic/Non-Economic Loss. As used in this
31 Part, "economic loss" and "non-economic loss" have the same
32 meanings as in Section 2-1109(b). †

33 ~~(a) "Economic loss" means all pecuniary harm for which~~

1 ~~damages are recoverable.~~

2 ~~(b) "Non-economic loss" means loss of consortium and all~~
3 ~~nonpecuniary harm for which damages are recoverable,~~
4 ~~including, without limitation, damages for pain and suffering,~~
5 ~~inconvenience, disfigurement, and physical impairment.~~

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

7 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

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

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

19 (735 ILCS 5/2-1720 new)

20 Sec. 2-1720. The Blue Ribbon Commission.

21 (a) The General Assembly finds as follows:

22 (1) The existing system for resolving medical
23 malpractice disputes has adversely affected the access to
24 and provision of health care in Illinois. Large jury
25 verdicts have resulted in high malpractice insurance
26 premiums and, in some cases, a complete denial of coverage.
27 As a result, some physicians have either relocated their
28 practices or retired from the practice of medicine. This
29 adversely affects the ability of the citizens of this State
30 to obtain high-quality health care, which, in turn,
31 adversely affects the economic and social viability of our
32 communities.

1 (2) Adoption of alternative dispute resolution
2 systems, including but not limited to no fault, mandatory
3 mediation, or some elements of the workers' compensation
4 system, including but not limited to the administrative
5 adjudication of disputes by qualified arbitrators, may
6 result in more equitable resolution of medical malpractice
7 disputes than the current system.

8 (b) There is created the Blue Ribbon Commission on Medical
9 Malpractice Reform consisting of the following:

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 one member.

14 (2) The President of the Senate and the Speaker of the
15 House of Representatives shall jointly select a certified
16 actuary to serve as a member.

17 (3) The Minority Leader of the Senate and the Minority
18 Leader of the House of Representatives shall jointly select
19 a certified actuary to serve as a member.

20 (4) One additional member as designated by each of the
21 following groups:

22 (A) The Illinois Trial Lawyers Association.

23 (B) The Illinois State Medical Society.

24 (C) The Illinois State Bar Association.

25 (D) The Illinois Hospital Association.

26 (E) The Illinois Long Term Care Association.

27 (F) The ISMIE Mutual Insurance Company.

28 (G) The American Insurance Association.

29 (H) The Illinois Insurance Association.

30 (I) The Chicago Bar Association.

31 (c) The Commission shall elect one of its legislative
32 members to serve as chairperson. The Commission shall meet at
33 the call of the chairperson. Members of the Commission shall
34 not be compensated for their service, but shall be reimbursed

1 for the actual expenses incurred in the performance of their
2 duties. The General Assembly shall provide technical and other
3 support services to the Commission as needed.

4 (d) The Commission shall study the advisability of
5 implementing an alternative system for the resolution of
6 healing art malpractice disputes including but not limited to
7 no fault, mandatory mediation and some elements of the current
8 workers' compensation system, including but not limited to the
9 administrative adjudication of disputes by qualified
10 arbitrators. The Commission shall consider funding mechanisms,
11 constitutional and other legal issues, economic issues, and any
12 other matters deemed advisable by the Commission.

13 The Commission shall report its findings and specific
14 recommendations to the Governor and the General Assembly no
15 later than March 1, 2005.

16 (735 ILCS 5/2-1721 new)

17 Sec. 2-1721. Hospitals; apparent, implied, or ostensible
18 agency. A hospital shall not be liable for the conduct of a
19 non-employee member of its medical staff under any claim based
20 upon apparent, implied, or ostensible agency as a matter of
21 law, provided:

22 (1) the specific member of the hospital's medical staff
23 personally informed the patient, or his or her legal
24 representative if present, before rendering treatment,
25 that he or she was not an agent or employee of the
26 hospital;

27 (2) the patient was unconscious or unaware of his or
28 her surroundings when brought to the hospital and the
29 patient's legal representative was not present at that
30 time; or

31 (3) the patient or the patient's representative signed
32 a separate document acknowledging an awareness that the
33 physicians treating the patient are not the agents of the

1 hospital.

2 This amendatory Act of the 93rd General Assembly applies to
3 causes of action accruing on or after its effective date.

4 (735 ILCS 5/8-1901) (from Ch. 110, par. 8-1901)

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

6 (a) The providing of, or payment for, medical, surgical,
7 hospital, or rehabilitation services, facilities, or equipment
8 by or on behalf of any person, or the offer to provide, or pay
9 for, any one or more of the foregoing, shall not be construed
10 as an admission of any liability by such person or persons.
11 Testimony, writings, records, reports or information with
12 respect to the foregoing shall not be admissible in evidence as
13 an admission of any liability in any action of any kind in any
14 court or before any commission, administrative agency, or other
15 tribunal in this State, except at the instance of the person or
16 persons so making any such provision, payment or offer.

17 (b) Any expression of grief, apology, remedial action, or
18 explanation provided by a health care provider, including, but
19 not limited to, a statement that the health care provider is
20 "sorry" for the outcome to a patient, the patient's family, or
21 the patient's legal representative about an inadequate or
22 unanticipated treatment or care outcome that is provided within
23 72 hours of when the provider knew or should have known of the
24 potential cause of such outcome shall not be admissible as
25 evidence in any action of any kind in any court or before any
26 tribunal, board, agency, or person. The disclosure of any such
27 information, whether proper, or improper, shall not waive or
28 have any effect upon its confidentiality or inadmissibility. As
29 used in this Section, a "health care provider" is any hospital,
30 nursing home or other facility, or employee or agent thereof, a
31 physician, or other licensed health care professional. Nothing
32 in this Section precludes the discovery or admissibility of any
33 other facts regarding the patient's treatment or outcome as

1 otherwise permitted by law.

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

3 (735 ILCS 5/8-2501) (from Ch. 110, par. 8-2501)

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

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

12 (a) Whether the witness is board certified or board
13 eligible in the same or substantially similar medical
14 specialties as the defendant and is qualified by experience
15 with the standard of care, methods, procedures, and treatments
16 relevant to the allegations against the defendant ~~Relationship~~
17 ~~of the medical specialties of the witness to the medical~~
18 ~~problem or problems and the type of treatment administered in~~
19 ~~the case;~~

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

25 (c) whether the witness is licensed in the same profession
26 with the same class of license as the defendant if the
27 defendant is an individual; and

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

31 An expert shall provide proof of active practice, teaching,
32 or engaging in university-based research. If retired, an expert
33 must provide proof of attendance and completion of continuing

1 education courses for 3 years previous to giving testimony. An
2 expert who has not actively practiced, taught, or been engaged
3 in university-based research for 10 years may not be qualified
4 as an expert witness.

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

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

8 Section 340. The Good Samaritan Act is amended by changing
9 Section 30 as follows:

10 (745 ILCS 49/30)

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

13 (a) A person licensed under the Medical Practice Act of
14 1987, a person licensed to practice the treatment of human
15 ailments in any other state or territory of the United States,
16 or a health care professional, including but not limited to an
17 advanced practice nurse, retired physician, physician
18 assistant, nurse, pharmacist, physical therapist, podiatrist,
19 or social worker licensed in this State or any other state or
20 territory of the United States, who, in good faith, provides
21 medical treatment, diagnosis, or advice as a part of the
22 services of an established free medical clinic providing care,
23 including but not limited to home visits, without charge to
24 ~~medically indigent~~ patients which is limited to care that does
25 not require the services of a licensed hospital or ambulatory
26 surgical treatment center and who receives no fee or
27 compensation from that source shall not be liable for civil
28 damages as a result of his or her acts or omissions in
29 providing that medical treatment, except for willful or wanton
30 misconduct.

31 (b) For purposes of this Section, a "free medical clinic"
32 is an organized community based program providing medical care

1 without charge to individuals ~~unable to pay for it~~, at which
2 the care provided does not include ~~the use of general~~
3 ~~anesthesia or require~~ an overnight stay in a health-care
4 facility.

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

9 (d) The immunity from civil damages provided under
10 subsection (a) also applies to physicians, retired physicians,
11 hospitals, and other health care providers that provide further
12 medical treatment, diagnosis, or advice, including but not
13 limited to hospitalization, office visits, and home visits, to
14 a patient upon referral from an established free medical clinic
15 without fee or compensation.

16 (d-5) A free medical clinic may receive reimbursement from
17 the Illinois Department of Public Aid or may receive partial
18 reimbursement from a patient based upon his or her ability to
19 pay, provided any reimbursements shall be used only to pay
20 overhead expenses of operating the free medical clinic and may
21 not be used, in whole or in part, to provide a fee or other
22 compensation to any person licensed under the Medical Practice
23 Act of 1987 or any other health care professional who is
24 receiving an exemption under this Section. Medical care shall
25 not include an overnight stay in a health care facility.

26 (e) Nothing in this Section prohibits a free medical clinic
27 from accepting voluntary contributions for medical services
28 provided to a patient who has acknowledged his or her ability
29 and willingness to pay a portion of the value of the medical
30 services provided.

31 (f) Any voluntary contribution collected for providing
32 care at a free medical clinic shall be used only to pay
33 overhead expenses of operating the clinic. No portion of any
34 moneys collected shall be used to provide a fee or other

1 compensation to any person licensed under Medical Practice Act
2 of 1987.

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

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

7 ARTICLE 4. SORRY WORKS! PILOT PROGRAM ACT

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

11 Section 405. Sorry Works! pilot program. The Sorry Works!
12 pilot program is established. During the first year of the
13 program's operation, participation in the program shall be open
14 to one hospital. Hospitals may participate only with the
15 approval of the hospital administration and the hospital's
16 organized medical staff. During the second year of the
17 program's operation, participation in the program shall be open
18 to one additional hospital.

19 The first participating hospital selected by the committee
20 established under Section 410 shall be located in a county with
21 a population greater than 200,000 that is contiguous with the
22 Mississippi River.

23 Under the program, participating hospitals and physicians
24 shall promptly acknowledge and apologize for mistakes in
25 patient care and promptly offer fair settlements.
26 Participating hospitals shall encourage patients and families
27 to retain their own legal counsel to ensure that their rights
28 are protected and to help facilitate negotiations for fair
29 settlements. Participating hospitals shall report to the
30 committee their total costs for healing art malpractice
31 verdicts, settlements, and defense litigation for the

1 preceding 5 years to enable the committee to determine average
2 costs for that hospital during that period. The committee shall
3 develop standards and protocols to compare costs for cases
4 handled by traditional means and cases handled under the Sorry
5 Works! protocol.

6 If the committee determines that the total costs of cases
7 handled under the Sorry Works! protocol by a hospital
8 participating in the program exceed the total costs that would
9 have been incurred if the cases had been handled by traditional
10 means, the hospital may apply for a grant from the Sorry Works!
11 Fund, a special fund that is created in the State Treasury, for
12 an amount, as determined by the committee, by which the total
13 costs exceed the total costs that would have been incurred if
14 the cases had been handled by traditional means; however, the
15 total of all grants from the Fund for cases in any single
16 participating hospital in any year may not exceed the amount in
17 the Fund or \$2,000,000, whichever is less. All grants shall be
18 subject to appropriation. Moneys in the Fund shall consist of
19 funds transferred into the Fund or otherwise made available
20 from any source.

21 Section 410. Establishment of committee.

22 (a) A committee is established to develop, oversee, and
23 implement the Sorry Works! pilot program. The committee shall
24 have 12 members, each of whom shall be a voting member. Seven
25 members of the committee shall constitute a quorum. The
26 committee shall be comprised as follows:

27 (1) One representative of the Illinois Department of
28 Insurance;

29 (2) One representative of the Illinois Department of
30 Professional Regulation;

31 (3) Two representatives of the Illinois State Medical
32 Society;

33 (4) Two representatives of the Illinois Trial Lawyers

1 Association;

2 (5) Two representatives of the Illinois Hospital
3 Association;

4 (6) Two representatives of the Illinois State Bar
5 Association; and

6 (7) Two actuarial experts chosen by the Director of
7 Insurance.

8 (b) The committee shall establish criteria for the program,
9 including but not limited to: selection of hospitals,
10 physicians, and insurers to participate in the program; and
11 creation of a subcommittee to review cases from hospitals and
12 determine whether hospitals, physicians, and insurers are
13 entitled to compensation under the program.

14 (c) The committee shall communicate with hospitals,
15 physicians, and insurers that are interested in participating
16 in the program. The committee shall make final decisions as to
17 which applicants are accepted for the program.

18 (d) The committee shall report to the Governor and the
19 General Assembly annually.

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

21 (f) Committee members shall receive no compensation for the
22 performance of their duties as members, but each member shall
23 be paid necessary expenses while engaged in the performance of
24 those duties.

25 Section 415. Termination of program.

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

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

31 Section 495. The State Finance Act is amended by adding
32 Section 5.626 as follows:

1 (30 ILCS 105/5.626 new)

2 Sec. 5.626. The Sorry Works! Fund.

3 ARTICLE 9. MISCELLANEOUS PROVISIONS

4 Section 995. Liberal construction; severability.

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

8 (b) The provisions of this Act are severable under Section
9 1.31 of the Statute on Statutes.

10 Section 999. Effective date. This Act takes effect upon
11 becoming law.".