

AN ACT concerning government.

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

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

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

Sec. 2. Representation and indemnification of State employees.

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

injury or other injury to the person of the complainant resulting from and arising out of any act or omission occurring on or after the effective date of this amendatory Act of 1988 within the scope of the employee's State employment, or in the event that any civil proceeding is commenced against any attorney who is an employee of the State Appellate Defender alleging legal malpractice or for other damages resulting from and arising out of any legal act or omission occurring on or after December 3, 1977, within the scope of the employee's State employment, or in the event that any civil proceeding is commenced against any individual or organization who contracts with the Department of Labor to provide services as a carnival and amusement ride safety inspector alleging malpractice, death or bodily injury or other injury to the person arising out of any act or omission occurring on or after May 1, 1985, within the scope of that employee's State employment, the Attorney General shall, upon timely and appropriate notice to him by such employee, appear on behalf of such employee and defend the action. Any such notice shall be in writing, shall be mailed within 15 days after the date of receipt by the employee of service of process, and shall authorize the Attorney General to represent and defend the employee in the proceeding. The giving of this notice to the Attorney General shall constitute an agreement by the State employee to cooperate with the Attorney General in his defense of the action and a consent that the Attorney General shall conduct

the defense as he deems advisable and in the best interests of the employee, including settlement in the Attorney General's discretion. In any such proceeding, the State shall pay the court costs and litigation expenses of defending such action, to the extent approved by the Attorney General as reasonable, as they are incurred.

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

intentional, wilful or wanton misconduct, the State shall indemnify the State employee for any damages awarded and court costs and attorneys' fees assessed as part of any final and unreversed judgment. In such event the State shall also pay the employee's court costs, litigation expenses and attorneys' fees to the extent approved by the Attorney General as reasonable.

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

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

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

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

(3) the employee agrees in writing that if judgment is entered in favor of the employee, the amount of the judgment shall be applied to offset any judgment that may

be entered in favor of the plaintiff, and then to reimburse the State treasury for court costs and litigation expenses required to pursue the counterclaim. The balance of the collected judgment shall be paid to the State employee.

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

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

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

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

(ii) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the chief administrative officer of the department, office or agency in which he is

employed. If not inconsistent with the provisions of this Section, such judgment or settlement shall be certified for payment by such chief administrative officer and by the Attorney General. The judgment or settlement shall be paid from the State Treasury on the warrant of the Comptroller out of appropriations made to the Department of Central Management Services specifically designed for the payment of claims covered by this Section.

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

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

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

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

(j) The amendatory changes made to this Section by this amendatory Act of 1986 shall apply to all proceedings filed on or after the effective date of this amendatory Act of 1986 and to any proceeding pending on its effective date, if the State employee gives notice to the Attorney General as provided in

this Section within 30 days of the effective date of this amendatory Act of 1986.

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

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

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

Section 10. The Local Governmental and Governmental Employees Tort Immunity Act is amended by changing Section 2-302 as follows:

(745 ILCS 10/2-302) (from Ch. 85, par. 2-302)

Sec. 2-302. If any claim or action is instituted against an employee of a local public entity based on an injury allegedly arising out of an act or omission occurring within the scope of his employment as such employee, the entity may elect to do any

one or more of the following:

- (a) appear and defend against the claim or action;
- (b) indemnify the employee or former employee for his court costs or reasonable attorney's fees, or both, incurred in the defense of such claim or action;
- (c) pay, or indemnify the employee or former employee for a judgment based on such claim or action; or
- (d) pay, or indemnify the employee or former employee for, a compromise or settlement of such a claim or action.

It is hereby declared to be the public policy of this State, however, that no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages.

If an employee of a local public entity is a defendant in any criminal action arising out of or incidental to the performance of his or her duties, the local public entity shall not provide representation for the employee in that criminal action. However, the local public entity may reimburse the employee for reasonable defense costs only if the criminal action was instituted against the employee based upon an act or omission of that employee arising out of and directly related to the lawful exercise of his or her official duty or under color of his or her authority and that action is dismissed or results in a final disposition in favor of that employee.

The provisions of indemnification, as set forth above, shall be justifiably refused by the local public entity if it

is determined that there exists a current insurance policy or a contract, by virtue of which the employee is entitled to a defense of the action in question.

Nothing in this Act shall be construed to prohibit a local public entity from providing representation to an employee who is a witness in a criminal matter arising out of that employee's employment with the local government entity.

(Source: P.A. 92-810, eff. 8-21-02.)

Section 99. Effective date. This Act takes effect on January 1, 2017.