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Criterion 2 Documents

Eastern Illinois University

Year 2014

State Employee Indemnification Act

Illinois General Assembly

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GENERAL PROVISIONS

(5 ILCS 350/) State Employee Indemnification Act.

(5 ILCS 350/0.01) (from Ch. 127, par. 1300)

Sec. 0.01. Short title. This Act may be cited as the State Employee Indemnification Act.
(Source: P.A. 86-1324.)

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

(Text of Section from P.A. 98-49)

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

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

(b) The term "employee" means any present or former elected or appointed officer, trustee or employee of the State, or of a pension fund, any present or former commissioner or employee of the Executive Ethics Commission or of the Legislative Ethics Commission, any present or former Executive, Legislative, or Auditor General's Inspector General, any present or former employee of an Office of an Executive, Legislative, or Auditor General's Inspector General, any present or former member of the Illinois National Guard while on active duty, individuals or organizations who contract with the Department of Corrections, the Comprehensive Health Insurance Board, or the Department of Veterans' Affairs to provide services, individuals or organizations who contract with the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) to provide services including but not limited to treatment and

other services for sexually violent persons, individuals or organizations who contract with the Department of Military Affairs for youth programs, individuals or organizations who contract to perform carnival and amusement ride safety inspections for the Department of Labor, individual representatives of or designated organizations authorized to represent the Office of State Long-Term Ombudsman for the Department on Aging, individual representatives of or organizations designated by the Department on Aging in the performance of their duties as adult protective services agencies or regional administrative agencies under the Adult Protective Services Act, individuals or organizations appointed as members of a review team or the Advisory Council under the Adult Protective Services Act, individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, individuals who serve on any public entity (whether created by law or administrative action) described in paragraph (a) of this Section, individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State, individuals who serve as foster parents for the Department of Children and Family Services when caring for a Department ward, individuals who serve as members of an independent team of experts under Brian's Law, and individuals who serve as arbitrators pursuant to Part 10A of Article II of the Code of Civil Procedure and the rules of the Supreme Court implementing Part 10A, each as now or hereafter amended, but does not mean an independent contractor except as provided in this Section. The term includes an individual appointed as an inspector by the Director of State Police when performing duties within the scope of the activities of a Metropolitan Enforcement Group or a law enforcement organization established under the Intergovernmental Cooperation Act. An individual who renders professional advice and consultation to the State through an organization which qualifies as an "employee" under the Act is also an employee. The term includes the estate or personal representative of an employee.

(c) The term "pension fund" means a retirement system or pension fund created under the Illinois Pension Code.
(Source: P.A. 98-49, eff. 7-1-13.)

(Text of Section from P.A. 98-83)

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

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

(b) The term "employee" means any present or former elected or appointed officer, trustee or employee of the State, or of a pension fund, any present or former commissioner or employee of the Executive Ethics Commission or

of the Legislative Ethics Commission, any present or former Executive, Legislative, or Auditor General's Inspector General, any present or former employee of an Office of an Executive, Legislative, or Auditor General's Inspector General, any present or former member of the Illinois National Guard while on active duty, individuals or organizations who contract with the Department of Corrections, the Department of Juvenile Justice, the Comprehensive Health Insurance Board, or the Department of Veterans' Affairs to provide services, individuals or organizations who contract with the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) to provide services including but not limited to treatment and other services for sexually violent persons, individuals or organizations who contract with the Department of Military Affairs for youth programs, individuals or organizations who contract to perform carnival and amusement ride safety inspections for the Department of Labor, individual representatives of or designated organizations authorized to represent the Office of State Long-Term Ombudsman for the Department on Aging, individual representatives of or organizations designated by the Department on Aging in the performance of their duties as elder abuse provider agencies or regional administrative agencies under the Elder Abuse and Neglect Act, individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, individuals who serve on any public entity (whether created by law or administrative action) described in paragraph (a) of this Section, individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State, individuals who serve as foster parents for the Department of Children and Family Services when caring for a Department ward, individuals who serve as members of an independent team of experts under Brian's Law, and individuals who serve as arbitrators pursuant to Part 10A of Article II of the Code of Civil Procedure and the rules of the Supreme Court implementing Part 10A, each as now or hereafter amended, but does not mean an independent contractor except as provided in this Section. The term includes an individual appointed as an inspector by the Director of State Police when performing duties within the scope of the activities of a Metropolitan Enforcement Group or a law enforcement organization established under the Intergovernmental Cooperation Act. An individual who renders professional advice and consultation to the State through an organization which qualifies as an "employee" under the Act is also an employee. The term includes the estate or personal representative of an employee.

(c) The term "pension fund" means a retirement system or pension fund created under the Illinois Pension Code.
(Source: P.A. 98-83, eff. 7-15-13.)

(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.

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

Sec. 4. Reimbursement to former State employees. A former State employee who is a defendant or a witness in any civil proceeding covered under this Act shall be entitled to reimbursement for travel expenses, per diem and an attendance fee for each day the Attorney General certifies that the former employee is reasonably required to spend in the defense of such proceeding. Reimbursement for travel expenses and per diem shall be at the rate allowed to State employees while on official business for the State. The attendance fee shall be the amount of wages or other income actually lost by the former employee on account of time spent in the defense of such proceedings.

(Source: P.A. 84-1431; 84-1438.)

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