

STATE OF ILLINOIS  
IN THE FOURTH JUDICIAL CIRCUIT  
CLAY COUNTY

JAMES MAINER, KALI MAINER, and )  
HCL DELUXE TAN, LLC, an Illinois )  
Limited liability company, )

Plaintiffs, )

Vs. )

ILLINOIS DEPARTMENT OF PUBLIC )  
HEALTH and DR. NGOZI EZIKE, in her )  
official capacity as Director of the Illinois )  
Department of Public Health, )

Defendants. )

2020CH9

~~Case No. 2020-CH-~~ \_\_\_\_\_

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**PLAINTIFF'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Plaintiffs JAMES MAINER, KALI MAINER and HCL DELUXE TAN, LLC., by and through their attorneys, Thomas G. DeVore, Erik D. Hyam, and DeVore Law Office, LLC., state the following as their Memorandum in Support of a Motion for a Temporary Restraining Order and Preliminary Injunction:

**INTRODUCTION**

1. On May 15, 2020, the Illinois Department of Public Health (the "Department") published a Notice of Emergency Amendment which went into effect on May 18, 2020 (the "Amendment").<sup>1</sup>

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<sup>1</sup> While all references within the Amendment suggest the same was enacted by the Department, it is of note that essentially all public commentary upon the Amendment has been made by the Governor, the Governor's chief counsel, Ann Spillane, and the Director of Illinois State Police, Brendan Kelly. As of the time of this filing, no public

2. The Department cited the Illinois Department of Public Health Act 20 ILCS 2305 (“IDPHA”) and the Communicable Disease Report Act 745 ILCS 45 as authority for its issuance of the Amendment.

3. The Amendment institutes sweeping substantive and procedural reform to the protections provided by the Illinois Legislature in the IDPHA.

4. There can be no doubt that the Department’s substantive law making exceeds its authority and violates the Illinois Administrative Procedure Act (“IAPA”).

5. As set forth more fully herein and in the Verified Complaint filed contemporaneously herewith, if left unchecked, the Department’s unlawful usurping of power will result in immediate, irreparable harm to citizens and businesses throughout our State.

6. To be abundantly clear, this case is not about the wisdom or purpose of the substantive new law expressed by the Department.

7. This case is about the Department’s far exceeding its rulemaking authority.

8. The substantive law of Illinois, and the wisdom of implementing it, is for the legislature, after proper discourse, and not the whim of the Department, its Director, or the Governor.

9. It bears noting that on the afternoon of May 15, 2020, the Governor, in the Circuit Court of Clay County (Cause No. 2020-CH-6), was denied his request to move a pending matter to Sangamon County.

10. That pending matter is a challenge to his authority to issue executive orders ordering businesses closed.

11. The businesses closed by the Amendment are some of the same businesses closed

by the Governor's executive orders.

### **STANDARD FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER**

12. In considering whether to issue injunctive relief, the court must consider four factors: (1) whether the movant has a right or interest that needs to be protected, (2) whether the movant has an adequate remedy at law, (3) the threat of irreparable harm to the movant if the injunction is not granted, and (4) the reasonable likelihood of success on the merits. *Arcor, Inc. v. Haas*, 363 Ill. App. 3d 396, 399 (1<sup>st</sup> Dist. 2005).

13. The movant need not show an actual injury before an injunction may issue. The threat of such injury is sufficient. *Gannett Outdoor of Chicago v. Baise*, 163 Ill. App. 3d 717, 722 (1<sup>st</sup> Dist. 1987).

14. A temporary restraining order ("TRO") is an equitable remedy that is issued when necessary to preserve the status quo until the court has an opportunity to rule on a motion for preliminary injunction after an evidentiary hearing.

15. "Status quo" is defined as the last actual, peaceable, uncontested status preceding the controversy. *NW Steel & Wire Co. v. Indus. Comm'n*, 254 Ill. App. 3d 472, 476 (1<sup>st</sup> Dist. 1993).

16. Plaintiffs seek to preserve the status quo of the Illinois Department of Public Health Act and the IAPA prior to the controversy at issue here, i.e. the Department's unlawful usurped the power reserved for the legislature by exceeding its rulemaking authority under, and in violation of, the IAPA.

### **I. PLAINTIFFS' LIKELIHOOD OF SUCCESS ON THE MERITS**

17. To show a likelihood of success on the merits, a party only needs to raise "a fair question about the existence of his right and that the court should preserve the status quo until the

case can be decided on the merits. *In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1075 (1<sup>st</sup> Dist. 2007); *see also Arpac Corp. v. Murray*, 226 Ill. App. 3d 65, 72 (1<sup>st</sup> Dist. 1992).

18. As set forth below, Plaintiffs' Verified Complaint raises more than fair questions about the existence of the rights of Plaintiffs, the limitations on the Department's authority, the substantive nature of the Amendment, the Department's violations of the IAPA, and the resulting nullity of the Amendment where the Department has exceeded its authority.

19. "The power to make the laws is a sovereign power vested in the legislature," and this power cannot be delegated to an administrative body. *People v. Tibbitts*, 56 Ill.2d 56, 58 (1973).

20. The Department is an administrative body created by legislative enactment for the purposes of supervising the interests of the health and lives of the people of this State as outlined in the Illinois Department of Public Health Act.

21. The Department is granted the authority to "adopt, promulgate, repeal and amend rules and regulations..." (See *20 ILCS 2305/2(a)*.)

22. Nothing within the IAPA or the IDPHA provides the Department authority to adopt, promulgate, repeal and amend statutes enacted by the Legislature.

23. Every state agency, unless otherwise provided by statute, must adhere to the confines of the IAPA in adopting, promulgating, repealing and amending its rules and regulations. (See *5 ILCS 100/1-5*.)

24. Therefore, an agency's rulemaking authority must be found in the statute authorizing it or in the IAPA.

25. An administrative agency cannot, by its rules or regulations, extend the substantive provisions of a legislative enactment, nor can it create substantive rights thereby. *People v. Kueper*,

111 Ill. App. 2d 42, 47 (5<sup>th</sup> Dist. 1969).

26. Although the Department has not cited the IAPA in connection with its authority to enact the Amendment, to be clear, the IAPA does not confer any such authority.

27. Section 5-10 of the IAPA allows for the making of rules of procedure for hearings; Section 5-15 allows for the making of rules regarding organization, information requests and rulemaking; and Section 10-5 allows for the making of rules for the handling of contested cases.

28. None of these provisions, nor any other provision in the IAPA, expressly authorizes any agency to promulgate substantive rules relating to the implementation or enforcement of particular statutes within their jurisdiction nor altering existing statutes.

29. Rather, the IAPA merely provides the procedure for making rules which are otherwise authorized by law.

30. The Amendment at issue is clearly substantive in that it seeks to deny substantive and procedural protections specifically provided in statute.

31. In 2004, former President Barack Obama, then Illinois State Senator, sponsored certain changes to the IDPHA, including the right to notice and counsel for a person or business that is sought to be closed, and the imposition of a strict scrutiny standard of review by the Courts. See Illinois Public Act 93-0829 which is attached hereto as Exhibit A for ease of reference.

32. The then Senator and his colleagues in the 93<sup>rd</sup> General Assembly clearly intended to provide our citizens with significant protections from overreach by a Chief Executive, and his administrative minions, acting in times of a public health emergency, similar to where the State finds itself today.

33. With the then Senator's requested changes, the Department could seek closure of a business in three ways: (1) obtain the consent of the owner; (2) obtain a Court order prior to

closure; or (3) if immediate action is required, issue an immediate closure and obtain the consent of the owner or petition for a court order within 48 hours. 20 ILCS 2305/2(c).

34. Prior to the emergency Amendment at issue here, any citizen or business whose premises the Department sought to close was guaranteed procedural due process by the express intention of the legislature. (See 20 ILCS 2305/2(c).)

35. Under the Illinois Department of Public Health Act, a business or citizen was entitled to a hearing before a Court, not just an administrative hearing, where the Department is required to provide facts, specific to that location, in order to obtain a closure of the premises.

36. The Department, under Section 2(c) of the IDPHA is required to prove, by clear and convincing evidence, that:

“...the public's health and welfare are significantly endangered...by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease.” 20 ILCS 2305/2(c)

37. Further, the Department must prove, again by clear and convincing evidence, that:

“...**all** other reasonable means of correcting the problem have been exhausted and **no less restrictive alternative exists.**” 20 ILCS 2305/2(c) (**Emphasis added.**)

38. For almost a century, the same check of authority, on rules and regulations of the Department of Public Health, has existed by Illinois Supreme Court precedent. See *People ex. rel. Barmore v. Robertson*, 302 Ill. 422 (1922).

39. The Illinois Supreme Court made it abundantly clear when it ruled “[h]ealth authorities cannot promulgate and enforce rules which merely have a tendency to prevent the spread of contagious and infection diseases...” *Id.* at 431. (Emphasis Added.)

40. The Court went on “authorities cannot interfere with the liberties of a citizen until the emergency actually exists.” *Id.*

41. This precedent is squarely in line with the safeguards for liberties enshrined in the IDPHA by the Legislature.

42. Under the executive fiat of the Governor, thinly veiled as an administrative rule:

a. The Department has arbitrarily determined that the premises of certain business types, not specific business locations, shall be closed for an unknown period.

b. The Department is required to make no findings nor provide even a scintilla of evidence that the business or location constitutes a significant health risk.

c. Citizens are stripped of their right to have a Court of this State review the facts and evidence put forth by the Department.

43. Generally, the emergency rulemaking provision of the IAPA provides that an emergency rule must expire no more than 150 days after it takes effect and no emergency rule may be issued more than one time within any 24-month period. (*5 ILCS 100/5-45(c)*)

44. That said, however, any emergency rule of the Department issued pursuant to authority under subsections (a) through (k) of the IDPHA, like that at issue here, are exempt from such limitations. (*5 ILCS 100/5-45(c)(iii).*)

45. Effectively, if the Department's authority to promulgate the Amendment is held valid, the Department may, reissue the emergency Amendment over and over and over, without limitation or check.

46. Allowing such an unchecked authority to divest citizens of protections specifically delineated in the IDPHA cannot be an authority conferred upon the Department.

47. Not only has the Department stripped the citizens of the protections guaranteed them by the Legislature, the Department has barred the Court from exercising any check upon executive authority wielded by the Department, its Director, agents and employees.

48. Citizens and businesses have a protectable interest in being free from invalid lawmaking generally, and certainly from that which blatantly denies them of procedural and substantive protections.

49. The Department has rewritten the law to affirmatively state that a mere possibility of contamination by COVID-19 is sufficient for closure.

50. This pronouncement of new law is not only inconsistent with black letter law in Illinois but presumes, on nothing more than a hunch, that certain types of businesses constitute a public health risk.

## II. PROTECTABLE RIGHTS AND INTERESTS ARE AT STAKE

51. It should go without saying that Plaintiffs have protectable rights and interests at stake.

52. As set forth more fully above, Plaintiffs have a protectable right and interest in being free from invalid lawmaking that blatantly overreaches the authority of the Department.

53. The Department has unilaterally determined that certain businesses, like that of Plaintiffs, automatically, without any oversight, constitute a threat to public health.

## III. IRREPARABLE HARM EXISTS FOR WHICH THERE IS NO ADEQUATE REMEDY AT LAW

54. Once a protectable interest has been established, “**irreparable injury [or harm] is presumed** if that interest is not protected.” *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4<sup>th</sup>) 190334, ¶ 51 (*quoting Cameron v. Bartels*, 214 Ill. App. 3d 69, 73 (4<sup>th</sup> Dist. 1991)) (emphasis added).

55. Moreover, for harm that is of a continuous nature, and involves a right for which monetary compensation would be inadequate, like a deprivation of liberty, courts have considered it to be *per se* irreparable harm. *C.J. v. Dept. of Human Services*, 331 Ill. App. 3d 871, 891-92 (1<sup>st</sup>



Dist. 2002).

56. Here, the harm is of a continuing nature so long as the Amendment is left unchecked and capable of being enforced by the Department or any other law enforcement agency which may desire.

57. Moreover, Plaintiffs face an unnecessary Sophie's Choice: acquiesce to the closure of their business or face criminal penalties for non-compliance.

WHEREFORE, Plaintiffs respectfully request that this Court enjoin the Commission from invoking the Amendments in favor of or against any person or entity until this Court has the opportunity to fully and finally declare the Amendment a nullity.

Respectfully submitted,

JAMES MAINER, KALIE MAINER and  
HCL DELUXE TAN, LLC., Plaintiffs.

By: /s/ Thomas G. DeVore  
One of Their Attorneys

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**PLAINTIFFS' VERIFIED MOTION FOR A PRELIMINARY INJUNCTION**

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Plaintiffs, JAMES MAINER, KALI MAINER and HCL DELUXE TAN, LLC., by and through their attorneys, Thomas G. DeVore, Erik D. Hyam, and DeVore Law Office, LLC., for the reasons set forth in their Verified Complaint and Memorandum in Support of Their Motion for a Preliminary Injunction, both of which are adopted and incorporated herein by reference, respectfully request this Court issue a preliminary injunction against Defendants. In support of this Motion, Plaintiffs state as follows:

1. As set forth more fully in the Verified Complaint and Memorandum, on May 15, 2020, the Illinois Department of Public Health (the "Department") published a Notice of Emergency Amendment to the Illinois Administrative Code (the "Code"), which went into effect on May 18, 2020 (the "Amendment").

2. The Amendment mandates a sweeping substantive legal change by denying certain procedural and substantive safeguards previously enacted by the legislature in the Illinois Department of Public Health Act. (20 ILCS 2305/2(c)).

3. In enacting the Amendment, the Department has exceeded its authority under the Illinois Department of Public Health Act in violation of the Illinois Administrative Procedure Act.

4. If left unchecked, the Department's unlawful usurp of lawmaking power reserved solely for the legislature will result in immediate, irreparable harm to citizens and businesses forced with the choice of complying with what is obviously an invalid and unlawful action by the Department, or risk being subject to criminal prosecution.

5. The public record is replete with comments from the Governor and the Director of Illinois State Police who have already threatened citizens and businesses of this State with the use of this new Amendment as a "tool" for the broader enforcement of the Governor's tenuous executive orders.

6. Plaintiffs have no adequate remedy at law because they are forced with the dilemma of either accepting the Department's deprivation of their procedural and substantive rights or facing criminal prosecution.

7. Plaintiffs clearly have protectable rights and interests at stake to be free from invalid lawmaking that strips them of procedural and substantive protections explicitly provided by statute.

8. Plaintiffs are likely to succeed on the merits as the Defendants did not have the authority to enact the Amendment, as the Amendment is beyond all authority granted to the Department and in direct contravention of the expressed intention of the Legislature, and therefore, such Amendment is void *ab initio*.

WHEREFORE, the Plaintiffs respectfully pray this Court enter an order that provides for:

- A. Entry of a preliminary injunction enjoining Defendants, or any administrative agency or law enforcement agency under its control, from exercising any color of authority under the emergency rule to interfere with a businesses right to open its premises; and
- B. Setting this matter for further hearing as the Court deems proper; and
- C. Such further relief as this Court deems just and equitable.

Respectfully submitted,

JAMES MAINER, KALIE MAINER and  
HCL DELUXE TAN, LLC., Plaintiffs.

By: /s/ Thomas G. DeVore  
One of Their Attorneys

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## Bill Status of HB5164 93rd General Assembly

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**Short Description:** DPH-PUB HLTH EMERGENCIES

### House Sponsors

Rep. [Sara Feigenholtz](#) - [Sidney H. Mathias](#) - [Barbara Flynn Currie](#) - [Harry Osterman](#) - [Deborah L. Graham](#), [Elizabeth Coulson](#), [Robin Kelly](#), [Karen May](#) and [Patricia Bailey](#)

### Senate Sponsors

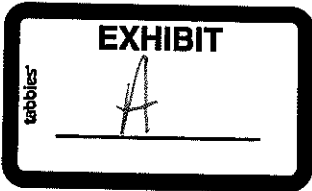
(Sen. [Barack Obama](#) - [Donne E. Trotter](#))

### Last Action

Date	Chamber	Action
7/28/2004	House	Public Act . . . . . <a href="#">93-0829</a>

### Statutes Amended In Order of Appearance

- [20 ILCS 2105/2105-400 new](#)
- [20 ILCS 2305/2](#) from Ch. 111 1/2, par. 22
- [20 ILCS 2305/2.1 new](#)
- [20 ILCS 2305/7](#) from Ch. 111 1/2, par. 22.05
- [20 ILCS 2310/2310-5](#)
- [20 ILCS 2310/2310-35](#) was 20 ILCS 2310/55.27
- [20 ILCS 2310/2310-50.5](#)
- [20 ILCS 2310/2310-610 new](#)
- [20 ILCS 2310/2310-615 new](#)
- [20 ILCS 2310/2310-620 new](#)
- [20 ILCS 2310/2310-625 new](#)
- [210 ILCS 25/7-102](#) from Ch. 111 1/2, par. 627-102
- [210 ILCS 50/3.255 new](#)
- [210 ILCS 85/10.4](#) from Ch. 111 1/2, par. 151.4
- [410 ILCS 517/15](#)
- [625 ILCS 5/1-105](#) from Ch. 95 1/2, par. 1-105
- [625 ILCS 5/12-215](#) from Ch. 95 1/2, par. 12-215
- [745 ILCS 45/1](#) from Ch. 126, par. 21
- [820 ILCS 305/11](#) from Ch. 48, par. 138.11
- [820 ILCS 310/1](#) from Ch. 48, par. 172.36
- [5 ILCS 100/5-45](#) from Ch. 127, par. 1005-45



### Synopsis As Introduced

Amends the Department of Public Health Act and various other Acts concerning public health

emergencies. Contains provisions relating to: quarantine and isolation; physical examinations, tests, and specimen collection; vaccines and medications; destruction of animals and property; access to medical records; syndromic data collection; information sharing; medical disaster plans; emergency personnel; immunity; and other matters. Effective immediately.

**House Committee Amendment No. 1**

Further amends the Department of Public Health Act, the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois, and the Hospital Licensing Act. Provides that those persons who are ordered to be isolated or quarantined or who are owners of places that are ordered to be closed shall be given written notice of the order. Sets forth information that must be included in the written notice. Provides that to the extent feasible without endangering the public's health, the Department shall respect and accommodate the religious beliefs of individuals in implementing certain provisions. Makes other changes.

**House Floor Amendment No. 2**

Deletes everything after the enacting clause. Reinserts the provisions of the introduced bill as amended by House Amendment No. 1. Makes further changes concerning modifying practice restrictions under certain licenses, actions with respect to "related" property, liability for willful and wanton misconduct, disclosure of information, and rules relating to coordination of public health preparedness. Makes other changes. Effective immediately.

**Actions**

Date	Chamber	Action
2/5/2004	House	Filed with the Clerk by <a href="#">Rep. Sara Feigenholtz</a>
<b>2/5/2004</b>	<b>House</b>	<b>First Reading</b>
2/5/2004	House	Referred to <a href="#">Rules Committee</a>
2/20/2004	House	Chief Co-Sponsor <a href="#">Rep. Sidney H. Mathias</a>
2/24/2004	House	Assigned to <a href="#">Human Services Committee</a>
3/4/2004	House	House Committee Amendment No. 1 Filed with Clerk by <a href="#">Human Services Committee</a>
3/4/2004	House	House Committee Amendment No. 1 Adopted in <a href="#">Human Services Committee</a> ; by Voice Vote
3/4/2004	House	Do Pass as Amended / Short Debate <a href="#">Human Services Committee</a> ; 007-000-001
3/4/2004	House	Placed on Calendar 2nd Reading - Short Debate
3/23/2004	House	House Floor Amendment No. 2 Filed with Clerk by <a href="#">Rep. Sara Feigenholtz</a>
3/23/2004	House	House Floor Amendment No. 2 Referred to <a href="#">Rules Committee</a>
<b>3/31/2004</b>	<b>House</b>	<b>Second Reading - Short Debate</b>
3/31/2004	House	Held on Calendar Order of Second Reading - Short Debate
4/1/2004	House	House Floor Amendment No. 2 Recommends Be Adopted <a href="#">Rules Committee</a> ; 004-000-000
4/1/2004	House	House Floor Amendment No. 2 Adopted by Voice Vote
4/1/2004	House	Placed on Calendar Order of 3rd Reading - Short Debate
4/2/2004	House	Added Chief Co-Sponsor <a href="#">Rep. Barbara Flynn Currie</a>
4/2/2004	House	Added Chief Co-Sponsor <a href="#">Rep. Harry Osterman</a>
4/2/2004	House	Added Chief Co-Sponsor <a href="#">Rep. Deborah L. Graham</a>
4/2/2004	House	Added Co-Sponsor <a href="#">Rep. Elizabeth Coulson</a>
4/2/2004	House	Added Co-Sponsor <a href="#">Rep. Robin Kelly</a>
4/2/2004	House	Added Co-Sponsor <a href="#">Rep. Karen May</a>
4/2/2004	House	Added Co-Sponsor <a href="#">Rep. Patricia Bailey</a>
<b>4/2/2004</b>	<b>House</b>	<b>Third Reading - Short Debate - Passed 117-000-000</b>
4/6/2004	Senate	Arrive in Senate

4/6/2004	Senate	Placed on Calendar Order of First Reading April 20, 2004
4/14/2004	Senate	Chief Senate Sponsor <u>Sen. Barack Obama</u>
<b>4/15/2004</b>	<b>Senate</b>	<b>First Reading</b>
4/15/2004	Senate	Referred to <u>Rules</u>
4/21/2004	Senate	Assigned to <u>Health &amp; Human Services</u>
4/27/2004	Senate	Added as Alternate Chief Co-Sponsor <u>Sen. Donne E. Trotter</u>
4/28/2004	Senate	Do Pass <u>Health &amp; Human Services</u> ; 009-000-000
4/28/2004	Senate	Placed on Calendar Order of 2nd Reading April 29, 2004
<b>4/29/2004</b>	<b>Senate</b>	<b>Second Reading</b>
4/29/2004	Senate	Placed on Calendar Order of 3rd Reading May 4, 2004
<b>5/11/2004</b>	<b>Senate</b>	<b>Third Reading - Passed; 053-000-000</b>
5/11/2004	House	Passed Both Houses
6/9/2004	House	Sent to the Governor
7/28/2004	House	Governor Approved
7/28/2004	House	Effective Date July 28, 2004
<b>7/28/2004</b>	<b>House</b>	<b>Public Act . . . . . 93-0829</b>

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 217-782-3944 217-782-2050 (TTY)

AN ACT concerning public health.

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

Section 5. The Department of Professional Regulation Law of the Civil Administrative Code of Illinois is amended by adding Section 2105-400 as follows:

(20 ILCS 2105/2105-400 new)

Sec. 2105-400. Emergency Powers.

(a) Upon proclamation of a disaster by the Governor, as provided for in the Illinois Emergency Management Agency Act, the Director of Professional Regulation shall have the following powers, which shall be exercised only in coordination with the Illinois Emergency Management Agency and the Department of Public Health:

(1) The power to suspend the requirements for permanent or temporary licensure of persons who are licensed in another state and are working under the direction of the Illinois Emergency Management Agency and the Department of Public Health pursuant to a declared disaster.

(2) The power to modify the scope of practice restrictions under any licensing act administered by the Department for any person working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(3) The power to expand the exemption in Section 4(a) of the Pharmacy Practice Act of 1987 to those licensed professionals whose scope of practice has been modified, under paragraph (2) of subsection (a) of this Section, to include any element of the practice of pharmacy as defined in the Pharmacy Practice Act of 1987 for any person working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(b) Persons exempt from licensure under paragraph (1) of subsection (a) of this Section and persons operating under modified scope of practice provisions under paragraph (2) of subsection (a) of this Section shall be exempt from licensure or be subject to modified scope of practice only until the declared disaster has ended as provided by law.

(c) The Director shall exercise these powers by way of proclamation.

Section 10. The Department of Public Health Act is amended by changing Sections 2 and 7 and by adding Section 2.1 as follows:

(20 ILCS 2305/2) (from Ch. 111 1/2, par. 22)



Sec. 2. Powers.

(a) The State Department of Public Health has general supervision of the interests of the health and lives of the people of the State. It has supreme authority in matters of quarantine and isolation, and may declare and enforce quarantine and isolation when none exists, and may modify or relax quarantine and isolation when it has been established. The Department may adopt, promulgate, repeal and amend rules and regulations and make such sanitary investigations and inspections as it may from time to time deem necessary for the preservation and improvement of the public health, consistent with law regulating the following:

(1) Transportation of the remains of deceased persons.

(2) Sanitary practices relating to drinking water made accessible to the public for human consumption or for lavatory or culinary purposes.

(3) Sanitary practices relating to rest room facilities made accessible to the public or to persons handling food served to the public.

(4) Sanitary practices relating to disposal of human wastes in or from all buildings and places where people live, work or assemble.

The provisions of the Illinois Administrative Procedure Act are hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Public Health under this Act, except that Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rule-making does not apply to the adoption of any rule required by federal law in connection with which the Department is precluded by law from exercising any discretion.

All local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality shall enforce the rules and regulations so adopted and orders issued by the Department pursuant to this Section.

The Department of Public Health shall conduct a public information campaign to inform Hispanic women of the high incidence of breast cancer and the importance of mammograms and where to obtain a mammogram. This requirement may be satisfied by translation into Spanish and distribution of the breast cancer summaries required by Section 2310-345 of the Department of Public Health Powers and Duties Law (20 ILCS 2310/2310-345). The information provided by the Department of Public Health shall include (i) a statement that mammography is the most accurate method for making an early detection of breast cancer, however, no diagnostic tool is 100% effective and (ii) instructions for performing breast self-examination and a statement that it is important to perform a breast self-examination monthly.

The Department of Public Health shall investigate the causes of dangerously contagious or infectious diseases, especially when existing in epidemic form, and take means to restrict and suppress the same, and whenever such disease becomes, or threatens to become epidemic, in any locality and the local board of health or local authorities neglect or refuse to enforce efficient measures for its restriction or suppression or to act with sufficient promptness or efficiency, or whenever the local board of health or local authorities neglect or refuse to promptly enforce efficient measures for the restriction or suppression of dangerously contagious or

infectious diseases, the Department of Public Health may enforce such measures as it deems necessary to protect the public health, and all necessary expenses so incurred shall be paid by the locality for which services are rendered.

(b) Subject to the provisions of subsection (c), the Department may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease, including non-compliant tuberculosis patients, until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists. Orders for isolation of a person or quarantine of a place to prevent the probable spread of a sexually transmissible disease shall be governed by the provisions of Section 7 of the Illinois Sexually Transmissible Disease Control Act and not this Section.

(c) Except as provided in this Section, no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. The Department may, however, order a person or a group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practical, within 48 hours after issuing the order, obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure. When exigent circumstances exist that cause the court system to be unavailable or that make it impossible to obtain consent or file a petition within 48 hours after issuance of an immediate order, the Department must obtain consent or file a petition requesting a court order as soon as reasonably possible. To obtain a court order, the Department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to with a dangerously contagious or infectious disease including non-compliant tuberculosis patients or by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease. The Department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. For purposes of this subsection, in determining whether no less restrictive alternative exists, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, quarantine or isolation is the measure provided for in a rule of the Department or in guidelines issued by the Centers for Disease Control and Prevention or the World Health Organization. Persons who are or are about to be ordered to be isolated or quarantined and owners of places that are or are about to be closed and made off limits to the public shall have the right to counsel. If a

person or owner is indigent, the court shall appoint counsel for that person or owner. Persons who are ordered to be isolated or quarantined or who are owners of places that are ordered to be closed and made off limits to the public, shall be given a written notice of such order. The written notice shall additionally include the following: (1) notice of the right to counsel; (2) notice that if the person or owner is indigent, the court will appoint counsel for that person or owner; (3) notice of the reason for the order for isolation, quarantine, or closure; (4) notice of whether the order is an immediate order, and if so, the time frame for the Department to seek consent or to file a petition requesting a court order as set out in this subsection; and (5) notice of the anticipated duration of the isolation, quarantine, or closure.

(d) The Department may order physical examinations and tests and collect laboratory specimens as necessary for the diagnosis or treatment of individuals in order to prevent the probable spread of a dangerously contagious or infectious disease. Physical examinations, tests, or collection of laboratory specimens must not be such as are reasonably likely to lead to serious harm to the affected individual. To prevent the spread of a dangerously contagious or infectious disease, the Department may, pursuant to the provisions of subsection (c) of this Section, isolate or quarantine any person whose refusal of physical examination or testing or collection of laboratory specimens results in uncertainty regarding whether he or she has been exposed to or is infected with a dangerously contagious or infectious disease or otherwise poses a danger to the public's health. An individual may refuse to consent to a physical examination, test, or collection of laboratory specimens. An individual shall be given a written notice that shall include notice of the following: (i) that the individual may refuse to consent to physical examination, test, or collection of laboratory specimens; (ii) that if the individual consents to physical examination, tests, or collection of laboratory specimens, the results of that examination, test, or collection of laboratory specimens may subject the individual to isolation or quarantine pursuant to the provisions of subsection (c) of this Section; (iii) that if the individual refuses to consent to physical examination, tests, or collection of laboratory specimens and that refusal results in uncertainty regarding whether he or she has been exposed to or is infected with a dangerously contagious or infectious disease or otherwise poses a danger to the public's health, the individual may be subject to isolation or quarantine pursuant to the provisions of subsection (c) of this Section; and (iv) that if the individual refuses to consent to physical examinations, tests, or collection of laboratory specimens and becomes subject to isolation and quarantine as provided in this subsection (d), he or she shall have the right to counsel pursuant to the provisions of subsection (c) of this Section. To the extent feasible without endangering the public's health, the Department shall respect and accommodate the religious beliefs of individuals in implementing this subsection.

(e) The Department may order the administration of vaccines, medications, or other treatments to persons as necessary in order to prevent the probable spread of a dangerously contagious or infectious disease. A vaccine, medication, or other treatment to be administered must not be such as is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of a dangerously

contagious or infectious disease, the Department may, pursuant to the provisions of subsection (c) of this Section, isolate or quarantine persons who are unable or unwilling to receive vaccines, medications, or other treatments pursuant to this Section. An individual may refuse to receive vaccines, medications, or other treatments. An individual shall be given a written notice that shall include notice of the following: (i) that the individual may refuse to consent to vaccines, medications, or other treatments; (ii) that if the individual refuses to receive vaccines, medications, or other treatments, the individual may be subject to isolation or quarantine pursuant to the provisions of subsection (c) of this Section; and (iii) that if the individual refuses to receive vaccines, medications, or other treatments and becomes subject to isolation or quarantine as provided in this subsection (e), he or she shall have the right to counsel pursuant to the provisions of subsection (c) of this Section. To the extent feasible without endangering the public's health, the Department shall respect and accommodate the religious beliefs of individuals in implementing this subsection.

(f) The Department may order observation and monitoring of persons to prevent the probable spread of a dangerously contagious or infectious disease. To prevent the spread of a dangerously contagious or infectious disease, the Department may, pursuant to the provisions of subsection (c) of this Section, isolate or quarantine persons whose refusal to undergo observation and monitoring results in uncertainty regarding whether he or she has been exposed to or is infected with a dangerously contagious or infectious disease or otherwise poses a danger to the public's health. An individual may refuse to undergo observation and monitoring. An individual shall be given written notice that shall include notice of the following: (i) that the individual may refuse to undergo observation and monitoring; (ii) that if the individual consents to observation and monitoring, the results of that observation and monitoring may subject the individual to isolation or quarantine pursuant to the provisions of subsection (c) of this Section; (iii) that if the individual refuses to undergo observation and monitoring and that refusal results in uncertainty regarding whether he or she has been exposed to or is infected with a dangerously contagious or infectious disease or otherwise poses a danger to the public's health, the individual may be subject to isolation or quarantine pursuant to the provisions of subsection (c) of this Section; and (iv) that if the individual refuses to undergo observation and monitoring and becomes subject to isolation or quarantine as provided in this subsection (f), he or she shall have the right to counsel pursuant to the provisions of subsection (c) of this Section.

(g) To prevent the spread of a dangerously contagious or infectious disease among humans, the Department may examine, test, disinfect, seize, or destroy animals or other related property believed to be sources of infection. An owner of such animal or other related property shall be given written notice regarding such examination, testing, disinfection, seizure, or destruction. When the Department determines that any animal or related property is infected with or has been exposed to a dangerously contagious or infectious disease, it may agree with the owner upon the value of the animal or of any related property that it may be found necessary to destroy, and in case such an agreement cannot be made, the animals or related

property shall be appraised by 3 competent and disinterested appraisers, one to be selected by the Department, one by the claimant, and one by the 2 appraisers thus selected. The appraisers shall subscribe to an oath made in writing to fairly value the animals or related property in accordance with the requirements of this Act. The oath, together with the valuation fixed by the appraisers, shall be filed with the Department and preserved by it. Upon the appraisal being made, the owner or the Department shall immediately destroy the animals by "humane euthanasia" as that term is defined in Section 2.09 of the Humane Care for Animals Act. Dogs and cats, however, shall be euthanized pursuant to the provisions of the Humane Euthanasia in Animal Shelters Act. The owner or the Department shall additionally, dispose of the carcasses, and disinfect, change, or destroy the premises occupied by the animals, in accordance with rules prescribed by the Department governing such destruction and disinfection. Upon his or her failure so to do or to cooperate with the Department, the Department shall cause the animals or related property to be destroyed and disposed of in the same manner, and thereupon the owner shall forfeit all right to receive any compensation for the destruction of the animals or related property. All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(h) To prevent the spread of a dangerously contagious or infectious disease, the Department, local boards of health, and local public health authorities shall have emergency access to medical or health information or records or data upon the condition that the Department, local boards of health, and local public health authorities shall protect the privacy and confidentiality of any medical or health information or records or data obtained pursuant to this Section in accordance with federal and State law. Additionally, any such medical or health information or records or data shall be exempt from inspection and copying under the Freedom of Information Act. Other than a hearing for the purpose of this Act, any information, records, reports, statements, notes, memoranda, or other data in the possession of the Department, local boards of health, or local public health authorities shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency, or person. The access to or disclosure of any of this information or data by the Department, a local board of health, or a local public authority shall not waive or have any effect upon its non-discoverability or non-admissibility. Any person, facility, institution, or agency that provides emergency access to health information and data under this subsection shall have immunity from any civil or criminal liability, or any other type of liability that might otherwise result by reason of these actions except in the event of willful and wanton misconduct. The privileged quality of communication between any professional person or any facility shall not constitute grounds for failure to provide emergency access. Nothing in this subsection shall prohibit the sharing of information as authorized in Section 2.1 of this Act. The disclosure of any of this information, records, reports, statements, notes, memoranda, or other data obtained in any

activity under this Act, except that necessary for the purposes of this Act, is unlawful, and any person convicted of violating this provision is guilty of a Class A misdemeanor.

(i) (A) The Department, in order to prevent and control disease, injury, or disability among citizens of the State of Illinois, may develop and implement, in consultation with local public health authorities, a Statewide system for syndromic data collection through the access to interoperable networks, information exchanges, and databases. The Department may also develop a system for the reporting of comprehensive, integrated data to identify and address unusual occurrences of disease symptoms and other medical complexes affecting the public's health.

(B) The Department may enter into contracts or agreements with individuals, corporations, hospitals, universities, not-for-profit corporations, governmental entities, or other organizations, whereby those individuals or entities agree to provide assistance in the compilation of the syndromic data collection and reporting system.

(C) The Department shall not release any syndromic data or information obtained pursuant to this subsection to any individuals or entities for purposes other than the protection of the public health. All access to data by the Department, reports made to the Department, the identity of or facts that would tend to lead to the identity of the individual who is the subject of the report, and the identity of or facts that would tend to lead to the identity of the author of the report shall be strictly confidential, are not subject to inspection or dissemination, and shall be used only for public health purposes by the Department, local public health authorities, or the Centers for Disease Control and Prevention. Entities or individuals submitting reports or providing access to the Department shall not be held liable for the release of information or confidential data to the Department in accordance with this subsection.

(D) Nothing in this subsection prohibits the sharing of information as authorized in Section 2.1 of this Act.

(j) (d) This Section shall be considered supplemental to the existing authority and powers of the Department and shall not be construed to restrain or restrict the Department in protecting the public health under any other provisions of the law.

(k) (e) Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any dangerously contagious or infectious disease in connection with the Department's power of quarantine, isolation and closure or refuses to comply with a quarantine, isolation or closure order is guilty of a Class A misdemeanor.

(l) (f) The Department of Public Health may establish and maintain a chemical and bacteriologic laboratory for the examination of water and wastes, and for the diagnosis of diphtheria, typhoid fever, tuberculosis, malarial fever and such other diseases as it deems necessary for the protection of the public health.

As used in this Act, "locality" means any governmental agency which exercises power pertaining to public health in an area less than the State.

The terms "sanitary investigations and inspections" and "sanitary practices" as used in this Act shall not include or apply to "Public Water Supplies" or "Sewage Works" as defined in the Environmental Protection Act. The Department may adopt rules that are reasonable and necessary to implement and effectuate this amendatory Act of the 93rd General Assembly.  
(Source: P.A. 91-239, eff. 1-1-00.)

(20 ILCS 2305/2.1 new)

Sec. 2.1. Information sharing.

(a) Whenever a State or local law enforcement authority learns of a case of an illness, health condition, or unusual disease or symptom cluster, reportable pursuant to rules adopted by the Department or by a local board of health or local public health authority, or a suspicious event that may be the cause of or related to a public health emergency, as that term is defined in Section 4 of the Illinois Emergency Management Agency Act, it shall immediately notify the Illinois Emergency Management Agency and the Department or local board of health or local public health authority.

(b) Whenever the Department or a local board of health or local public health authority learns of a case of an illness, health condition, or unusual disease or symptom cluster, reportable pursuant to rules adopted by the Department or by a local board of health or a local public health authority, or a suspicious event that it reasonably believes has the potential to be the cause of or related to a public health emergency, as that term is defined in Section 4 of the Illinois Emergency Management Agency Act, it shall immediately notify the Illinois Emergency Management Agency, the appropriate State and local law enforcement authorities, other appropriate State agencies, and federal health and law enforcement authorities and, after that notification, it shall provide law enforcement authorities with such other information as law enforcement authorities may request for the purpose of conducting a criminal investigation or a criminal prosecution of or arising out of that matter. No information containing the identity or tending to reveal the identity of any person may be redisclosed by law enforcement, except in a prosecution of that person for the commission of a crime.

(c) Sharing of information on reportable illnesses, health conditions, unusual disease or symptom clusters, or suspicious events between and among public health and law enforcement authorities shall be restricted to the information necessary for the treatment in response to, control of, investigation of, and prevention of a public health emergency, as that term is defined in Section 4 of the Illinois Emergency Management Act, or for criminal investigation or criminal prosecution of or arising out of that matter.

(d) The operation of the language of this Section is not dependent upon a declaration of disaster by the Governor pursuant to the Illinois Emergency Management Agency Act.

(20 ILCS 2305/7) (from Ch. 111 1/2, par. 22.05)

Sec. 7. The Illinois Department of Public Health shall adopt rules requiring that upon death of a person who had or is suspected of having an infectious or communicable disease that could be transmitted through contact with the person's body or bodily fluids, the body shall be labeled "Infection Hazard", or with an equivalent term to inform persons having subsequent contact with the body, including any funeral director or

embalmer, to take suitable precautions. Such rules shall require that the label shall be prominently displayed on and affixed to the outer wrapping or covering of the body if the body is wrapped or covered in any manner. Responsibility for such labeling shall lie with the attending physician who certifies death, or if the death occurs in a health care facility, with such staff member as may be designated by the administrator of the facility. The Department may adopt rules providing for the safe disposal of human remains. To the extent feasible without endangering the public's health, the Department shall respect and accommodate the religious beliefs of individuals in implementing this Section.  
(Source: P.A. 85-1209.)

Section 15. The Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois is amended by changing Sections 2310-5, 2310-35, and 2310-50.5 and by adding Sections 2310-610, 2310-615, 2310-620, and 2310-625 as follows:

(20 ILCS 2310/2310-5)

Sec. 2310-5. Definitions. In this Law:

"Department" means the Department of Public Health.

"Director" means the Director of Public Health.

"Public health emergency" has the meaning set forth in Section 4 of the Illinois Emergency Management Agency Act.  
(Source: P.A. 91-239, eff. 1-1-00.)

(20 ILCS 2310/2310-35) (was 20 ILCS 2310/55.27)

Sec. 2310-35. Federal monies; indirect cost reimbursements. To accept, receive, and receipt for federal monies, for and in behalf of the State, given by the federal government under any federal law to the State for health purposes, surveys, or programs, and to adopt necessary rules pertaining thereto pursuant to the Illinois Administrative Procedure Act. To deposit indirect cost reimbursements received by the Department into the Public Health Special State Projects Fund, and to expend those funds, subject to appropriation, for public health purposes only.  
(Source: P.A. 91-239, eff. 1-1-00.)

(20 ILCS 2310/2310-50.5)

Sec. 2310-50.5. Coordination concerning public health emergencies. To coordinate with the Illinois Emergency Management Agency with respect to planning for and responding to public health emergencies, as defined in Section 4 of the Illinois Emergency Management Agency Act. The Department shall additionally cooperate with the Governor, other State agencies and local authorities, including local public health authorities, in the development of strategies and plans to protect the public health in the event of a public health emergency, as defined in Section 4 of the Illinois Emergency Management Agency Act.  
(Source: P.A. 93-249, eff. 7-22-03.)

(20 ILCS 2310/2310-610 new)

Sec. 2310-610. Rules; public health preparedness. The Department shall adopt and implement rules, contact lists, and response plans governing public health preparedness and response.



(20 ILCS 2310/2310-615 new)

Sec. 2310-615. Department coordination; public health preparedness. The Department shall require and coordinate development and implementation of public health preparedness and response plans by local health departments and facilities licensed by the Department.

(20 ILCS 2310/2310-620 new)

Sec. 2310-620. Cooperation; public health preparedness. The Department shall collaborate with relevant federal government authorities, State agencies, local authorities, including local public health authorities, elected officials from other states, and private sector organizations on public health preparedness and response.

(20 ILCS 2310/2310-625 new)

Sec. 2310-625. Emergency Powers.

(a) Upon proclamation of a disaster by the Governor, as provided for in the Illinois Emergency Management Agency Act, the Director of Public Health shall have the following powers, which shall be exercised only in coordination with the Illinois Emergency Management Agency and the Department of Professional Regulation:

(1) The power to suspend the requirements for temporary or permanent licensure or certification of persons who are licensed or certified in another state and are working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(2) The power to modify the scope of practice restrictions under the Emergency Medical Services (EMS) Systems Act for any persons who are licensed under that Act for any person working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(3) The power to modify the scope of practice restrictions under the Nursing Home Care Act for Certified Nursing Assistants for any person working under the direction of the Illinois Emergency Management Agency and the Illinois Department of Public Health pursuant to the declared disaster.

(b) Persons exempt from licensure or certification under paragraph (1) of subsection (a) and persons operating under modified scope of practice provisions under paragraph (2) of subsection (a) and paragraph (3) of subsection (a) shall be exempt from licensure or certification or subject to modified scope of practice only until the declared disaster has ended as provided by law.

(c) The Director shall exercise these powers by way of proclamation.

Section 20. The Illinois Clinical Laboratory and Blood Bank Act is amended by changing Section 7-102 as follows:

(210 ILCS 25/7-102) (from Ch. 111 1/2, par. 627-102)

Sec. 7-102. Reports of test results. The result of a test shall be reported directly to the licensed physician or other authorized person who requested it. No interpretation, diagnosis or prognosis or suggested treatment shall appear on the laboratory report form except that a report made by a

physician licensed to practice medicine in Illinois, a dentist licensed in Illinois, or a therapeutic optometrist may include such information. Nothing in this Act prohibits the sharing of information as authorized in Section 2.1 of the Department of Public Health Act.

(Source: P.A. 90-322, eff. 1-1-98.)

Section 25. The Emergency Medical Services (EMS) Systems Act is amended by adding Section 3.255 as follows:

(210 ILCS 50/3.255 new)

Sec. 3.255. Emergency Medical Disaster Plan. The Department shall develop and implement an Emergency Medical Disaster Plan to assist emergency medical services personnel and health care facilities in working together in a collaborative way and to provide support in situations where local medical resources are overwhelmed, including but not limited to public health emergencies, as that term is defined in Section 4 of the Illinois Emergency Management Agency Act. As part of the plan, the Department may designate lead hospitals in each Emergency Medical Services region established under this Act and may foster the creation and coordination of volunteer medical response teams that can be deployed to assist when a locality's capacity is overwhelmed. In developing an Emergency Medical Disaster Plan, the Department shall collaborate with the entities listed in Sections 2310-50.5 and 2310-620 of the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois.

Section 30. The Hospital Licensing Act is amended by changing Section 10.4 as follows:

(210 ILCS 85/10.4) (from Ch. 111 1/2, par. 151.4)

Sec. 10.4. Medical staff privileges.

(a) Any hospital licensed under this Act or any hospital organized under the University of Illinois Hospital Act shall, prior to the granting of any medical staff privileges to an applicant, or renewing a current medical staff member's privileges, request of the Director of Professional Regulation information concerning the licensure status and any disciplinary action taken against the applicant's or medical staff member's license, except: (1) for medical personnel who enter a hospital to obtain organs and tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act; or (2) for medical personnel who have been granted disaster privileges pursuant to the procedures and requirements established by rules adopted by the Department. Any hospital and any employees of the hospital or others involved in granting privileges that, in good faith, grants disaster privileges pursuant to this Section to respond to an emergency shall not, as a result of his, her, or its acts or omissions, be liable for civil damages for granting or denying disaster privileges except in the event of willful and wanton misconduct, as that term is defined in Section 10.2 of this Act. Individuals granted privileges who provide care in an emergency situation, in good faith and without direct compensation, shall not, as a result of his or her acts or omissions, except for acts or omissions involving willful and wanton misconduct, as that term is defined in Section 10.2 of this Act, on the part of the person, be liable for civil

damages. The Director of Professional Regulation shall transmit, in writing and in a timely fashion, such information regarding the license of the applicant or the medical staff member, including the record of imposition of any periods of supervision or monitoring as a result of alcohol or substance abuse, as provided by Section 23 of the Medical Practice Act of 1987, and such information as may have been submitted to the Department indicating that the application or medical staff member has been denied, or has surrendered, medical staff privileges at a hospital licensed under this Act, or any equivalent facility in another state or territory of the United States. The Director of Professional Regulation shall define by rule the period for timely response to such requests.

No transmittal of information by the Director of Professional Regulation, under this Section shall be to other than the president, chief operating officer, chief administrative officer, or chief of the medical staff of a hospital licensed under this Act, a hospital organized under the University of Illinois Hospital Act, or a hospital operated by the United States, or any of its instrumentalities. The information so transmitted shall be afforded the same status as is information concerning medical studies by Part 21 of Article VIII of the Code of Civil Procedure, as now or hereafter amended.

(b) All hospitals licensed under this Act, except county hospitals as defined in subsection (c) of Section 15-1 of the Illinois Public Aid Code, shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing, or denying medical staff membership and clinical staff privileges. Hospitals that require medical staff members to possess faculty status with a specific institution of higher education are not required to comply with subsection (1) below when the physician does not possess faculty status.

(1) Minimum procedures for pre-applicants and applicants for medical staff membership shall include the following:

(A) Written procedures relating to the acceptance and processing of pre-applicants or applicants for medical staff membership, which should be contained in medical staff bylaws.

(B) Written procedures to be followed in determining a pre-applicant's or an applicant's qualifications for being granted medical staff membership and privileges.

(C) Written criteria to be followed in evaluating a pre-applicant's or an applicant's qualifications.

(D) An evaluation of a pre-applicant's or an applicant's current health status and current license status in Illinois.

(E) A written response to each pre-applicant or applicant that explains the reason or reasons for any adverse decision (including all reasons based in whole or in part on the applicant's medical qualifications or any other basis, including economic factors).

(2) Minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff shall include the following:

(A) A written notice of an adverse decision.

(B) An explanation of the reasons for an adverse

decision including all reasons based on the quality of medical care or any other basis, including economic factors.

(C) A statement of the medical staff member's right to request a fair hearing on the adverse decision before a hearing panel whose membership is mutually agreed upon by the medical staff and the hospital governing board. The hearing panel shall have independent authority to recommend action to the hospital governing board. Upon the request of the medical staff member or the hospital governing board, the hearing panel shall make findings concerning the nature of each basis for any adverse decision recommended to and accepted by the hospital governing board.

(i) Nothing in this subparagraph (C) limits a hospital's or medical staff's right to summarily suspend, without a prior hearing, a person's medical staff membership or clinical privileges if the continuation of practice of a medical staff member constitutes an immediate danger to the public, including patients, visitors, and hospital employees and staff. A fair hearing shall be commenced within 15 days after the suspension and completed without delay.

(ii) Nothing in this subparagraph (C) limits a medical staff's right to permit, in the medical staff bylaws, summary suspension of membership or clinical privileges in designated administrative circumstances as specifically approved by the medical staff. This bylaw provision must specifically describe both the administrative circumstance that can result in a summary suspension and the length of the summary suspension. The opportunity for a fair hearing is required for any administrative summary suspension. Any requested hearing must be commenced within 15 days after the summary suspension and completed without delay. Adverse decisions other than suspension or other restrictions on the treatment or admission of patients may be imposed summarily and without a hearing under designated administrative circumstances as specifically provided for in the medical staff bylaws as approved by the medical staff.

(iii) If a hospital exercises its option to enter into an exclusive contract and that contract results in the total or partial termination or reduction of medical staff membership or clinical privileges of a current medical staff member, the hospital shall provide the affected medical staff member 60 days prior notice of the effect on his or her medical staff membership or privileges. An affected medical staff member desiring a hearing under subparagraph (C) of this paragraph (2) must request the hearing within 14 days after the date

he or she is so notified. The requested hearing shall be commenced and completed (with a report and recommendation to the affected medical staff member, hospital governing board, and medical staff) within 30 days after the date of the medical staff member's request. If agreed upon by both the medical staff and the hospital governing board, the medical staff bylaws may provide for longer time periods.

(D) A statement of the member's right to inspect all pertinent information in the hospital's possession with respect to the decision.

(E) A statement of the member's right to present witnesses and other evidence at the hearing on the decision.

(F) A written notice and written explanation of the decision resulting from the hearing.

(F-5) A written notice of a final adverse decision by a hospital governing board.

(G) Notice given 15 days before implementation of an adverse medical staff membership or clinical privileges decision based substantially on economic factors. This notice shall be given after the medical staff member exhausts all applicable procedures under this Section, including item (iii) of subparagraph (C) of this paragraph (2), and under the medical staff bylaws in order to allow sufficient time for the orderly provision of patient care.

(H) Nothing in this paragraph (2) of this subsection (b) limits a medical staff member's right to waive, in writing, the rights provided in subparagraphs (A) through (G) of this paragraph (2) of this subsection (b) upon being granted the written exclusive right to provide particular services at a hospital, either individually or as a member of a group. If an exclusive contract is signed by a representative of a group of physicians, a waiver contained in the contract shall apply to all members of the group unless stated otherwise in the contract.

(3) Every adverse medical staff membership and clinical privilege decision based substantially on economic factors shall be reported to the Hospital Licensing Board before the decision takes effect. These reports shall not be disclosed in any form that reveals the identity of any hospital or physician. These reports shall be utilized to study the effects that hospital medical staff membership and clinical privilege decisions based upon economic factors have on access to care and the availability of physician services. The Hospital Licensing Board shall submit an initial study to the Governor and the General Assembly by January 1, 1996, and subsequent reports shall be submitted periodically thereafter.

(4) As used in this Section:

"Adverse decision" means a decision reducing, restricting, suspending, revoking, denying, or not renewing medical staff membership or clinical privileges.

"Economic factor" means any information or reasons for

decisions unrelated to quality of care or professional competency.

"Pre-applicant" means a physician licensed to practice medicine in all its branches who requests an application for medical staff membership or privileges.

"Privilege" means permission to provide medical or other patient care services and permission to use hospital resources, including equipment, facilities and personnel that are necessary to effectively provide medical or other patient care services. This definition shall not be construed to require a hospital to acquire additional equipment, facilities, or personnel to accommodate the granting of privileges.

(5) Any amendment to medical staff bylaws required because of this amendatory Act of the 91st General Assembly shall be adopted on or before July 1, 2001.

(c) All hospitals shall consult with the medical staff prior to closing membership in the entire or any portion of the medical staff or a department. If the hospital closes membership in the medical staff, any portion of the medical staff, or the department over the objections of the medical staff, then the hospital shall provide a detailed written explanation for the decision to the medical staff 10 days prior to the effective date of any closure. No applications need to be provided when membership in the medical staff or any relevant portion of the medical staff is closed.  
(Source: P.A. 90-14, eff. 7-1-97; 90-149, eff. 1-1-98; 90-655, eff. 7-30-98; 91-166, eff. 1-1-00.)

Section 35. The Health Care Professional Credentials Data Collection Act is amended by changing Section 15 as follows:

(410 ILCS 517/15)

Sec. 15. Development and use of uniform health care and hospital credentials forms.

(a) The Department, in consultation with the council, shall by rule establish:

(1) a uniform health care credentials form that shall include the credentials data commonly requested by health care entities and health care plans for purposes of credentialing and shall minimize the need for the collection of additional credentials data;

(2) a uniform health care recredentials form that shall include the credentials data commonly requested by health care entities and health care plans for purposes of recredentialing and shall minimize the need for the collection of additional credentials data;

(3) a uniform hospital credentials form that shall include the credentials data commonly requested by hospitals for purposes of credentialing and shall minimize the need for the collection of additional credentials data;

(4) a uniform hospital recredentials form that shall include the credentials data commonly requested by hospitals for purposes of recredentialing and shall minimize the need for collection of additional credentials data; and

(5) uniform updating forms.

(b) The uniform forms established in subsection (a) shall be coordinated to reduce the need to provide redundant

information. Further, the forms shall be made available in both paper and electronic formats.

(c) The Department, in consultation with the council, shall establish by rule a date after which an electronic format may be required by a health care entity, a health care plan, or a hospital, and a health care professional may require acceptance of an electronic format by a health care entity, a health care plan, or a hospital.

(d) Beginning January 1, 2002, each health care entity or health care plan that employs, contracts with, or allows health care professionals to provide medical or health care services and requires health care professionals to be credentialed or recertified shall for purposes of collecting credentials data only require:

- (1) the uniform health care credentials form;
- (2) the uniform health care recertification form;
- (3) the uniform updating forms; and
- (4) any additional credentials data requested.

(e) Beginning January 1, 2002, each hospital that employs, contracts with, or allows health care professionals to provide medical or health care services and requires health care professionals to be credentialed or recertified shall for purposes of collecting credentials data only require:

- (1) the uniform hospital credentials form;
- (2) the uniform hospital recertification form;
- (3) the uniform updating forms; and
- (4) any additional credentials data requested.

(f) Each health care entity and health care plan shall complete the process of verifying a health care professional's credentials data in a timely fashion and shall complete the process of credentialing or recertification of the health care professional within 60 days after submission of all credentials data and completion of verification of the credentials data.

(g) Each health care professional shall provide any corrections, updates, and modifications to his or her credentials data to ensure that all credentials data on the health care professional remains current. Such corrections, updates, and modifications shall be provided within 5 business days for State health care professional license revocation, federal Drug Enforcement Agency license revocation, Medicare or Medicaid sanctions, revocation of hospital privileges, any lapse in professional liability coverage required by a health care entity, health care plan, or hospital, or conviction of a felony, and within 45 days for any other change in the information from the date the health care professional knew of the change. All updates shall be made on the uniform updating forms developed by the Department.

(h) Any credentials data collected or obtained by the health care entity, health care plan, or hospital shall be confidential, as provided by law, and otherwise may not be redisclosed without written consent of the health care professional, except that in any proceeding to challenge credentialing or recertification, or in any judicial review, the claim of confidentiality shall not be invoked to deny a health care professional, health care entity, health care plan, or hospital access to or use of credentials data. Nothing in this Section prevents a health care entity, health care plan, or hospital from disclosing any credentials data to its officers, directors, employees, agents, subcontractors, medical staff members, any committee of the health care entity, health care plan, or hospital involved in the credentialing

process, or accreditation bodies or licensing agencies. However, any redisclosure of credentials data contrary to this Section is prohibited.

(i) Nothing in this Act shall be construed to restrict the right of any health care entity, health care plan or hospital to request additional information necessary for credentialing or recredentialing.

(j) Nothing in this Act shall be construed to restrict in any way the authority of any health care entity, health care plan or hospital to approve, suspend or deny an application for hospital staff membership, clinical privileges, or managed care network participation.

(k) Nothing in this Act shall be construed to prohibit delegation of credentialing and recredentialing activities as long as the delegated entity follows the requirements set forth in this Act.

(l) Nothing in this Act shall be construed to require any health care entity or health care plan to credential or survey any health care professional.

(m) Nothing in this Act prohibits a hospital from granting disaster privileges pursuant to the provisions of Section 10.4 of the Hospital Licensing Act. When a hospital grants disaster privileges pursuant to Section 10.4 of the Hospital Licensing Act, that hospital is not required to collect credentials data pursuant to this Act.

(Source: P.A. 91-602, eff. 8-16-99; 92-193, eff. 1-1-02.)

Section 40. The Illinois Vehicle Code is amended by changing Sections 1-105 and 12-215 as follows:

(625 ILCS 5/1-105) (from Ch. 95 1/2, par. 1-105)

Sec. 1-105. Authorized emergency vehicle. Emergency vehicles of municipal departments or public service corporations as are designated or authorized by proper local authorities; police vehicles; vehicles of the fire department; ambulances; vehicles of the Illinois Emergency Management Agency; vehicles of the Illinois Department of Public Health; and vehicles of the Department of Nuclear Safety.

(Source: P.A. 92-138, eff. 7-24-01.)

(625 ILCS 5/12-215) (from Ch. 95 1/2, par. 12-215)

Sec. 12-215. Oscillating, rotating or flashing lights on motor vehicles. Except as otherwise provided in this Code:

(a) The use of red or white oscillating, rotating or flashing lights, whether lighted or unlighted, is prohibited except on:

1. Law enforcement vehicles of State, Federal or local authorities;

2. A vehicle operated by a police officer or county coroner and designated or authorized by local authorities, in writing, as a law enforcement vehicle; however, such designation or authorization must be carried in the vehicle;

3. Vehicles of local fire departments and State or federal firefighting vehicles;

4. Vehicles which are designed and used exclusively as ambulances or rescue vehicles; furthermore, such lights shall not be lighted except when responding to an emergency call for and while actually conveying the sick or injured;

5. Tow trucks licensed in a state that requires such



lights; furthermore, such lights shall not be lighted on any such tow truck while the tow truck is operating in the State of Illinois;

6. Vehicles of the Illinois Emergency Management Agency, vehicles of the Illinois Department of Public Health, and vehicles of the Department of Nuclear Safety;

7. Vehicles operated by a local or county emergency management services agency as defined in the Illinois Emergency Management Agency Act; and

8. School buses operating alternately flashing head lamps as permitted under Section 12-805 of this Code.

(b) The use of amber oscillating, rotating or flashing lights, whether lighted or unlighted, is prohibited except on:

1. Second division vehicles designed and used for towing or hoisting vehicles; furthermore, such lights shall not be lighted except as required in this paragraph 1; such lights shall be lighted when such vehicles are actually being used at the scene of an accident or disablement; if the towing vehicle is equipped with a flat bed that supports all wheels of the vehicle being transported, the lights shall not be lighted while the vehicle is engaged in towing on a highway; if the towing vehicle is not equipped with a flat bed that supports all wheels of a vehicle being transported, the lights shall be lighted while the towing vehicle is engaged in towing on a highway during all times when the use of headlights is required under Section 12-201 of this Code;

2. Motor vehicles or equipment of the State of Illinois, local authorities and contractors; furthermore, such lights shall not be lighted except while such vehicles are engaged in maintenance or construction operations within the limits of construction projects;

3. Vehicles or equipment used by engineering or survey crews; furthermore, such lights shall not be lighted except while such vehicles are actually engaged in work on a highway;

4. Vehicles of public utilities, municipalities, or other construction, maintenance or automotive service vehicles except that such lights shall be lighted only as a means for indicating the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing while such vehicles are engaged in maintenance, service or construction on a highway;

5. Oversized vehicle or load; however, such lights shall only be lighted when moving under permit issued by the Department under Section 15-301 of this Code;

6. The front and rear of motorized equipment owned and operated by the State of Illinois or any political subdivision thereof, which is designed and used for removal of snow and ice from highways;

7. Fleet safety vehicles registered in another state, furthermore, such lights shall not be lighted except as provided for in Section 12-212 of this Code;

8. Such other vehicles as may be authorized by local authorities;

9. Law enforcement vehicles of State or local authorities when used in combination with red oscillating, rotating or flashing lights;

9.5. Propane delivery trucks;

10. Vehicles used for collecting or delivering mail for the United States Postal Service provided that such lights shall not be lighted except when such vehicles are actually being used for such purposes;

11. Any vehicle displaying a slow-moving vehicle emblem as provided in Section 12-205.1;

12. All trucks equipped with self-compactors or roll-off hoists and roll-on containers for garbage or refuse hauling. Such lights shall not be lighted except when such vehicles are actually being used for such purposes;

13. Vehicles used by a security company, alarm responder, or control agency;

14. Security vehicles of the Department of Human Services; however, the lights shall not be lighted except when being used for security related purposes under the direction of the superintendent of the facility where the vehicle is located; and

15. Vehicles of union representatives, except that the lights shall be lighted only while the vehicle is within the limits of a construction project.

(c) The use of blue oscillating, rotating or flashing lights, whether lighted or unlighted, is prohibited except on:

1. Rescue squad vehicles not owned by a fire department and vehicles owned or fully operated by a:

voluntary firefighter;

paid firefighter;

part-paid firefighter;

call firefighter;

member of the board of trustees of a fire protection district;

paid or unpaid member of a rescue squad;

paid or unpaid member of a voluntary ambulance unit; or

paid or unpaid members of a local or county emergency management services agency as defined in the Illinois Emergency Management Agency Act, designated or authorized by local authorities, in writing, and carrying that designation or authorization in the vehicle.

However, such lights are not to be lighted except when responding to a bona fide emergency.

2. Police department vehicles in cities having a population of 500,000 or more inhabitants.

3. Law enforcement vehicles of State or local authorities when used in combination with red oscillating, rotating or flashing lights.

4. Vehicles of local fire departments and State or federal firefighting vehicles when used in combination with red oscillating, rotating or flashing lights.

5. Vehicles which are designed and used exclusively as ambulances or rescue vehicles when used in combination with red oscillating, rotating or flashing lights; furthermore, such lights shall not be lighted except when responding to an emergency call.

6. Vehicles that are equipped and used exclusively as organ transport vehicles when used in combination with red

oscillating, rotating, or flashing lights; furthermore, these lights shall only be lighted when the transportation is declared an emergency by a member of the transplant team or a representative of the organ procurement organization.

7. Vehicles of the Illinois Emergency Management Agency, vehicles of the Illinois Department of Public Health, and vehicles of the Department of Nuclear Safety, when used in combination with red oscillating, rotating, or flashing lights.

8. Vehicles operated by a local or county emergency management services agency as defined in the Illinois Emergency Management Agency Act, when used in combination with red oscillating, rotating, or flashing lights.

(c-1) In addition to the blue oscillating, rotating, or flashing lights permitted under subsection (c), and notwithstanding subsection (a), a vehicle operated by a voluntary firefighter, a voluntary member of a rescue squad, or a member of a voluntary ambulance unit may be equipped with flashing white headlights and blue grill lights, which may be used only in responding to an emergency call.

(c-2) In addition to the blue oscillating, rotating, or flashing lights permitted under subsection (c), and notwithstanding subsection (a), a vehicle operated by a paid or unpaid member of a local or county emergency management services agency as defined in the Illinois Emergency Management Agency Act, may be equipped with white oscillating, rotating, or flashing lights to be used in combination with blue oscillating, rotating, or flashing lights, if authorization by local authorities is in writing and carried in the vehicle.

(d) The use of a combination of amber and white oscillating, rotating or flashing lights, whether lighted or unlighted, is prohibited except motor vehicles or equipment of the State of Illinois, local authorities, contractors, and union representatives may be so equipped; furthermore, such lights shall not be lighted on vehicles of the State of Illinois, local authorities, and contractors except while such vehicles are engaged in highway maintenance or construction operations within the limits of highway construction projects, and shall not be lighted on the vehicles of union representatives except when those vehicles are within the limits of a construction project.

(e) All oscillating, rotating or flashing lights referred to in this Section shall be of sufficient intensity, when illuminated, to be visible at 500 feet in normal sunlight.

(f) Nothing in this Section shall prohibit a manufacturer of oscillating, rotating or flashing lights or his representative from temporarily mounting such lights on a vehicle for demonstration purposes only.

(g) Any person violating the provisions of subsections (a), (b), (c) or (d) of this Section who without lawful authority stops or detains or attempts to stop or detain another person shall be guilty of a Class 4 felony.

(h) Except as provided in subsection (g) above, any person violating the provisions of subsections (a) or (c) of this Section shall be guilty of a Class A misdemeanor.

(Source: P.A. 92-138, eff. 7-24-01; 92-407, eff. 8-17-01; 92-651, eff. 7-11-02; 92-782, eff. 8-6-02; 92-820, eff. 8-21-02; 92-872, eff. 6-1-03; 93-181, eff. 1-1-04.)

Section 45. The Communicable Disease Report Act is amended

by changing Section 1 as follows:

(745 ILCS 45/1) (from Ch. 126, par. 21)

Sec. 1. Whenever any statute of this State or any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute or any rule of an administrative agency adopted pursuant to statute requires medical practitioners or other persons to report cases of injury, medical condition or procedure, communicable disease, venereal disease, or sexually transmitted disease to any governmental agency or officer, such reports shall be confidential, and any medical practitioner or other person making such report in good faith shall be immune from suit for slander or libel based upon any statements contained in such report.

The identity of any individual who makes a report or who is identified in a report of an injury, medical condition or procedure, communicable disease, venereal disease, sexually transmitted disease, or food-borne illness or an investigation conducted pursuant to a report of an injury, medical condition or procedure, communicable disease, venereal disease, sexually transmitted disease, or food-borne illness shall be confidential and the identity of any person making a report or named therein shall not be disclosed publicly or in any action of any kind in any court or before any tribunal, board or agency; provided that records and communications concerning a venereal disease or sexually transmitted disease in any minor under 11 years of age shall be disclosed in accordance with the provisions of the Abused and Neglected Child Reporting Act, approved June 26, 1975, as now or hereafter amended.

The confidentiality provisions of this Act do not apply to the results of tests for diseases conducted pursuant to subsections (g) and (g-5) of Section 5-5-3 and subsection (a) of Section 3-15-2 of the Unified Code of Corrections.

Nothing in this Act prohibits the sharing of information as authorized in Section 2.1 of the Department of Public Health Act.

(Source: P.A. 89-187, eff. 7-19-95; 89-381, eff. 8-18-95; 89-477, eff. 6-18-96; 89-626, eff. 8-9-96.)

Section 50. The Workers' Compensation Act is amended by changing Section 11 as follows:

(820 ILCS 305/11) (from Ch. 48, par. 138.11)

Sec. 11. The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and whose election to continue under this Act, has not been nullified by any action of his employees as provided for in this Act.

Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by

his employer to participate in the program.

Accidental injuries incurred while participating as a patient in a drug or alcohol rehabilitation program do not arise out of and in the course of employment even though the employer pays some or all of the costs thereof.

Any injury to or disease or death of an employee arising from the administration of a vaccine, including without limitation smallpox vaccine, to prepare for, or as a response to, a threatened or potential bioterrorist incident to the employee as part of a voluntary inoculation program in connection with the person's employment or in connection with any governmental program or recommendation for the inoculation of workers in the employee's occupation, geographical area, or other category that includes the employee is deemed to arise out of and in the course of the employment for all purposes under this Act. This paragraph added by this amendatory Act of the 93rd General Assembly is declarative of existing law and is not a new enactment.

(Source: P.A. 81-1482.)

Section 55. The Workers' Occupational Diseases Act is amended by changing Section 1 as follows:

(820 ILCS 310/1) (from Ch. 48, par. 172.36)

Sec. 1. This Act shall be known and may be cited as the "Workers' Occupational Diseases Act".

(a) The term "employer" as used in this Act shall be construed to be:

1. The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

2. Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations, who has any person in service or under any contract for hire, express or implied, oral or written.

3. Where an employer operating under and subject to the provisions of this Act loans an employee to another such employer and such loaned employee sustains a compensable occupational disease in the employment of such borrowing employer and where such borrowing employer does not provide or pay the benefits or payments due such employee, such loaning employer shall be liable to provide or pay all benefits or payments due such employee under this Act and as to such employee the liability of such loaning and borrowing employers shall be joint and several, provided that such loaning employer shall in the absence of agreement to the contrary be entitled to receive from such borrowing employer full reimbursement for all sums paid or incurred pursuant to this paragraph together with reasonable attorneys' fees and expenses in any hearings before the Industrial Commission or in any action to secure such reimbursement. Where any benefit is provided or paid by such loaning employer, the employee shall have the duty of rendering reasonable co-operation in any hearings, trials or proceedings in the case, including such proceedings for reimbursement.

Where an employee files an Application for Adjustment of Claim with the Industrial Commission alleging that his or her claim is covered by the provisions of the preceding paragraph, and joining both the alleged loaning and borrowing employers, they and each of them, upon written demand by the employee and

within 7 days after receipt of such demand, shall have the duty of filing with the Industrial Commission a written admission or denial of the allegation that the claim is covered by the provisions of the preceding paragraph and in default of such filing or if any such denial be ultimately determined not to have been bona fide then the provisions of Paragraph K of Section 19 of this Act shall apply.

An employer whose business or enterprise or a substantial part thereof consists of hiring, procuring or furnishing employees to or for other employers operating under and subject to the provisions of this Act for the performance of the work of such other employers and who pays such employees their salary or wage notwithstanding that they are doing the work of such other employers shall be deemed a loaning employer within the meaning and provisions of this Section.

(b) The term "employee" as used in this Act, shall be construed to mean:

1. Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation therein, whether by election, appointment or contract of hire, express or implied, oral or written, including any official of the State, or of any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein and except any duly appointed member of the fire department in any city whose population exceeds 500,000 according to the last Federal or State census, and except any member of a fire insurance patrol maintained by a board of underwriters in this State. One employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

2. Every person in the service of another under any contract of hire, express or implied, oral or written, who contracts an occupational disease while working in the State of Illinois, or who contracts an occupational disease while working outside of the State of Illinois but where the contract of hire is made within the State of Illinois, and any person whose employment is principally localized within the State of Illinois, regardless of the place where the disease was contracted or place where the contract of hire was made, including aliens, and minors who, for the purpose of this Act, except Section 3 hereof, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees. An employee or his or her dependents under this Act who shall have a cause of action by reason of an occupational disease, disablement or death arising out of and in the course of his or her employment may elect or pursue his or her remedy in the State where the disease was contracted, or in the State where the contract of hire is made, or in the State where the employment is principally localized.

(c) "Commission" means the Industrial Commission created by the Workers' Compensation Act, approved July 9, 1951, as amended.

(d) In this Act the term "Occupational Disease" means a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result

of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public.

A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence.

An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists; provided however, that in a claim of exposure to atomic radiation, the fact of such exposure must be verified by the records of the central registry of radiation exposure maintained by the Department of Public Health or by some other recognized governmental agency maintaining records of such exposures whenever and to the extent that the records are on file with the Department of Public Health or the agency.

Any injury to or disease or death of an employee arising from the administration of a vaccine, including without limitation smallpox vaccine, to prepare for, or as a response to, a threatened or potential bioterrorist incident to the employee as part of a voluntary inoculation program in connection with the person's employment or in connection with any governmental program or recommendation for the inoculation of workers in the employee's occupation, geographical area, or other category that includes the employee is deemed to arise out of and in the course of the employment for all purposes under this Act. This paragraph added by this amendatory Act of the 93rd General Assembly is declarative of existing law and is not a new enactment.

The employer liable for the compensation in this Act provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease claimed upon regardless of the length of time of such last exposure, except, in cases of silicosis or asbestosis, the only employer liable shall be the last employer in whose employment the employee was last exposed during a period of 60 days or more after the effective date of this Act, to the hazard of such occupational disease, and, in such cases, an exposure during a period of less than 60 days, after the effective date of this Act, shall not be deemed a last exposure. If a miner who is suffering or suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines there shall, effective July 1, 1973 be a rebuttable presumption that his or her pneumoconiosis arose out of such employment.

If a deceased miner was employed for 10 years or more in one or more coal mines and died from a respirable disease there shall, effective July 1, 1973, be a rebuttable presumption that his or her death was due to pneumoconiosis.

The insurance carrier liable shall be the carrier whose policy was in effect covering the employer liable on the last day of the exposure rendering such employer liable in accordance with the provisions of this Act.

(e) "Disablement" means an impairment or partial impairment, temporary or permanent, in the function of the body

or any of the members of the body, or the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he or she claims compensation, or equal wages in other suitable employment; and "disability" means the state of being so incapacitated.

(f) No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease, except in cases of occupational disease caused by berylliosis or by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease and except in the case of occupational disease caused by exposure to radiological materials or equipment, and in such case, within 25 years after the last day of last exposure to the hazards of such disease.

(Source: P.A. 81-992.)

Section 60. The Illinois Administrative Procedure Act is amended by changing Section 5-45 as follows:

(5 ILCS 100/5-45) (from Ch. 127, par. 1005-45)

Sec. 5-45. Emergency rulemaking.

(a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.

(b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

(c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules that may be adopted in a 24 month period does not apply to (i) emergency rules that make additions to and deletions from the Drug Manual under Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary under Section 3.14 of the Illinois Food, Drug and Cosmetic Act, ~~or~~ (ii) emergency rules adopted by the Pollution Control Board before July 1, 1997 to implement portions of the Livestock Management Facilities Act; or (iii) emergency rules adopted by the Illinois Department of Public Health under subsections (a) through (i) of Section 2 of the Department of Public Health Act when necessary to protect the public's health. Two or more emergency rules having substantially the same purpose and



effect shall be deemed to be a single rule for purposes of this Section.

(d) In order to provide for the expeditious and timely implementation of the State's fiscal year 1999 budget, emergency rules to implement any provision of Public Act 90-587 or 90-588 or any other budget initiative for fiscal year 1999 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (d). The adoption of emergency rules authorized by this subsection (d) shall be deemed to be necessary for the public interest, safety, and welfare.

(e) In order to provide for the expeditious and timely implementation of the State's fiscal year 2000 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2000 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (e). The adoption of emergency rules authorized by this subsection (e) shall be deemed to be necessary for the public interest, safety, and welfare.

(f) In order to provide for the expeditious and timely implementation of the State's fiscal year 2001 budget, emergency rules to implement any provision of this amendatory Act of the 91st General Assembly or any other budget initiative for fiscal year 2001 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (f). The adoption of emergency rules authorized by this subsection (f) shall be deemed to be necessary for the public interest, safety, and welfare.

(g) In order to provide for the expeditious and timely implementation of the State's fiscal year 2002 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2002 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (g). The adoption of emergency rules authorized by this subsection (g) shall be deemed to be necessary for the public interest, safety, and welfare.

(h) In order to provide for the expeditious and timely implementation of the State's fiscal year 2003 budget, emergency rules to implement any provision of this amendatory Act of the 92nd General Assembly or any other budget initiative for fiscal year 2003 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (h). The adoption of emergency rules authorized by this subsection (h) shall be deemed to be necessary for the

public interest, safety, and welfare.

(i) In order to provide for the expeditious and timely implementation of the State's fiscal year 2004 budget, emergency rules to implement any provision of this amendatory Act of the 93rd General Assembly or any other budget initiative for fiscal year 2004 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (i). The adoption of emergency rules authorized by this subsection (i) shall be deemed to be necessary for the public interest, safety, and welfare.

(Source: P.A. 92-10, eff. 6-11-01; 92-597, eff. 6-28-02; 93-20, eff. 6-20-03.)

Section 99. Effective date. This Act takes effect upon becoming law.