

A bill for an act

relating to transportation; providing an alternative compensation and settlement process for survivors of the I-35W catastrophe; appropriating money; amending Minnesota Statutes 2006, section 3.736, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 3.736, subdivision 4, is amended to read:

Subd. 4. **Limits.** The total liability of the state and its employees acting within the scope of their employment on any tort claim shall not exceed:

(a) \$300,000 when the claim is one for death by wrongful act or omission and \$300,000 to any claimant in any other case, for claims arising before ~~January~~ August 1, ~~2008~~ 2007;

(b) \$400,000 when the claim is one for death by wrongful act or omission and \$400,000 to any claimant in any other case, for claims arising on or after ~~January~~ August 1, ~~2008~~ 2007, and before July 1, 2009;

(c) \$500,000 when the claim is one for death by wrongful act or omission and \$500,000 to any claimant in any other case, for claims arising on or after July 1, 2009;

(d) \$750,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 1998, and before January 1, 2000;

(e) \$1,000,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2000, and before January 1, 2008;

(f) \$1,200,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2008, and before July 1, 2009; or

(g) \$1,500,000 for any number of claims arising out of a single occurrence, for claims arising on or after July 1, 2009.

If the amount awarded to or settled upon multiple claimants exceeds the applicable limit under clause (d), (e), (f), or (g), any party may apply to the district court to apportion to each claimant a proper share of the amount available under the applicable limit under clause (d), (e), (f), or (g). The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement bears to the aggregate awards and settlements for all claims arising out of the occurrence.

The limitation imposed by this subdivision on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

EFFECTIVE DATE. This section is effective retroactively from August 1, 2007.

Sec. 2. **[3.7391] PURPOSE.**

Subdivision 1. Findings; I-35W bridge. The legislature finds that the collapse of the Interstate Highway 35W bridge over the Mississippi River in Minneapolis on August 1, 2007, was a catastrophe of historic proportions. The bridge was the third-busiest in the state, carrying over 140,000 cars per day. Its collapse killed 13 people and injured more than 100. No other structure owned by this state has ever fallen with such devastating physical and psychological impact on so many.

Subd. 2. Compensation process. The establishment of a compensation process under sections 3.7391 to 3.7394 for survivors of the catastrophe furthers the public interest by providing a remedy for survivors while avoiding the uncertainty and expense of potentially complex and protracted litigation to resolve the issue of the liability of the state, a municipality, or their employees for damages incurred by survivors.

Subd. 3. Not an admission of liability. These findings are not an admission of liability of the state, a municipality, or their employees for damages caused by the catastrophe.

Sec. 3. **[3.7392] DEFINITIONS.**

Subdivision 1. Application. The definitions in this section apply to sections 3.7391 to 3.7394.

Subd. 2. Catastrophe. "Catastrophe" means the collapse of the I-35W bridge over the Mississippi River in Minneapolis on August 1, 2007.

Subd. 3. Damages. "Damages" means damages that are compensable under state tort law and damages for wrongful death that are compensable under section 573.02. Damages do not include punitive damages or attorney fees or other fees incurred by a survivor in making a claim under this section or other law.

Subd. 4. **Emergency relief fund.** "Emergency relief fund" means the I-35W bridge emergency relief fund created by the state on November 30, 2007.

Subd. 5. **Municipality.** "Municipality" has the meaning given in section 466.01.

Subd. 6. **Panel.** "Panel" means the special master panel created under section 3.7393.

Subd. 7. **State.** "State" has the meaning given in section 3.732.

Subd. 8. **Survivor.** "Survivor" means a natural person who was present on the I-35W bridge at the time of the collapse. Survivor also includes:

(1) the parent or legal guardian of a survivor who is under 18 years of age;

(2) a legally appointed representative of a survivor; or

(3) the surviving spouse or next of kin of a deceased survivor who would be entitled to bring an action under section 573.02.

Sec. 4. **[3.7393] CONSIDERATION AND PAYMENT OF CLAIMS.**

Subdivision 1. **Special master panel.** The chief justice of the Supreme Court shall establish a special master panel to consider claims, make offers of settlement, and enter into settlement agreements with survivors on behalf of the state. The panel must be established by June 30, 2008. The panel must consist of three attorneys. Members of the panel must have experience in legal issues involving the settlement of tort claims and the determination of damages. The chief justice shall designate a member of the panel to serve as chair of the panel. The chief justice shall determine the pay and expenses to be received by the panel.

Subd. 2. **Staff.** Within the limits of available appropriations, the state court administrator, in consultation with the panel, shall hire employees or retain consultants necessary to assist the panel in performing its duties under this section. Employees are in the unclassified state civil service. The panel may also use consultants who are under a contract with the state or current state employees to assist the panel in processing claims under this section.

Subd. 3. **Records.** Records of the panel related to a claim filed by a survivor, an offer of settlement, or an acceptance or rejection of an offer are not accessible to the public except for:

(1) the name of the survivor; and

(2) the terms of any written settlement agreement between the survivor and the state.

Subd. 4. **Procedure.** Consistent with sections 3.7391 to 3.7394, the panel may adopt and modify procedures, rules, and forms for considering claims, making offers of settlement, entering into settlement agreements, and considering requests for and making

4.1 supplemental payments. The panel must allow each survivor to appear in person before
4.2 the panel or one of its members.

4.3 Subd. 5. **Payment of panel expenses.** The state court administrator shall forward
4.4 documentation of salaries, expenses, and administrative costs under this section to the
4.5 commissioner of finance for payment of those amounts.

4.6 Subd. 6. **Immunity.** Members of the panel and employees and consultants acting
4.7 under the direction of the panel are absolutely immune from civil liability for any act or
4.8 omission occurring within the scope of the performance of their duties under this section.

4.9 Subd. 7. **General duties.** The panel shall consider claims, make offers of settlement,
4.10 and enter into settlement agreements with survivors as provided in this section. The panel
4.11 must not consider negligence or any other theory of liability. The panel shall make offers
4.12 of settlement and supplemental payments under this section with the assumption that no
4.13 future appropriation will be available for these purposes and shall include a notice of this
4.14 provision when making settlement offers.

4.15 Subd. 8. **Effect and finality of offers and settlement agreements.** (a) An offer of
4.16 settlement made to a survivor under this section is considered for all purposes to be an
4.17 offer to the survivor to settle a legal claim.

4.18 (b) A determination by the panel regarding an offer of settlement or settlement
4.19 agreement or a supplemental payment is final and not subject to judicial review.

4.20 (c) The amount of damages incurred by a survivor calculated by the panel pursuant
4.21 to subdivision 10 may not be used in a subsequent court proceeding in evidence or
4.22 otherwise to determine any rights, duties, or responsibilities of the state or any other party.

4.23 Subd. 9. **Deadlines.** In order to be eligible to receive an offer of settlement or enter
4.24 into a settlement agreement under this section or to receive a supplemental payment
4.25 under subdivision 12, a survivor must file a claim with the panel by October 15, 2008.
4.26 Any offer of settlement must be made by February 28, 2009. A survivor must accept or
4.27 reject the offer of settlement within 45 days after receiving the offer. Failure to accept an
4.28 offer within 45 days is a rejection. A survivor who is eligible to receive a supplemental
4.29 payment under subdivision 12 may choose to wait until the survivor's supplemental
4.30 payment is calculated before accepting or rejecting an offer of settlement, provided that a
4.31 survivor may not accept an offer of settlement later than 45 days after receiving notice of
4.32 the proposed supplemental payment award. The decision to accept or reject an offer is
4.33 irrevocable. The panel must notify a survivor of the deadlines for response to an offer of
4.34 settlement as provided in this subdivision.

5.1 Subd. 10. **Calculation of amount.** The panel shall determine the total damages
5.2 incurred by a survivor. The amount of an offer of settlement under this section must be
5.3 calculated based on the total damages, less:

5.4 (1) payments made to the survivor up to the date the settlement offer is made from
5.5 the collateral sources referred to in section 548.36, subdivision 1;

5.6 (2) any payment made to the survivor from the emergency relief fund; and

5.7 (3) any payments made or required to be made to the survivor by a third-party
5.8 tortfeasor under the terms of a settlement or other agreement with the survivor that exists
5.9 at the time the offer is made or a final judgment in favor of the survivor concerning claims
5.10 of the survivor that relate to, involve, or arise out of the catastrophe.

5.11 Subd. 11. **Offers of settlement; limit on amount.** (a) The amount of an offer of
5.12 settlement or payment required by a settlement agreement must not exceed \$400,000.
5.13 This limitation does not apply to a supplemental payment made under subdivision 12. An
5.14 offer of settlement must be accompanied by a notice to the survivor of the remainder of
5.15 the amount calculated under subdivision 10 that is not included in the offer because of the
5.16 limitation under this paragraph and the amount of the remainder for which a supplemental
5.17 payment may be awarded.

5.18 (b) Notwithstanding section 3.736, subdivision 4, clause (e), or section 466.04,
5.19 subdivision 1, paragraph (a), clause (5), the \$1,000,000 limitation on state or municipal
5.20 liability for claims arising out of a single occurrence otherwise applicable to the
5.21 catastrophe does not apply to payments made to survivors under this section. The amount
5.22 that may be paid by the state is limited by the appropriations for this purpose.

5.23 Subd. 12. **Supplemental payments.** (a) For purposes of this subdivision,
5.24 "uncompensated medical expenses" means:

5.25 (1) medical expenses less payments made to a survivor from collateral sources
5.26 referred to in section 548.36, subdivision 1, that provide payments for medical expenses;
5.27 and

5.28 (2) the present value of premiums, deductibles, and coinsurance payments for
5.29 high-risk health plan coverage offered by the Minnesota Comprehensive Health
5.30 Association or by another similar health plan.

5.31 (b) A survivor is eligible for a supplemental payment if the offer of settlement
5.32 calculation for the survivor, as provided in subdivision 10, exceeds \$400,000.
5.33 The supplemental payment must be calculated based solely on that portion of the
5.34 uncompensated medical expenses, loss of income, future earning capacity, or other
5.35 financial support for which compensation was not received under the offer of settlement or
5.36 settlement agreement under subdivision 11. A supplemental payment may only be made

to a survivor who has accepted an offer of settlement, entered into a settlement agreement, and executed a release under subdivision 13. Consistent with the requirements of this section, the panel shall establish necessary procedures and timelines for the award of supplemental payments. A supplemental payment may be made only for the following purposes, in the following order of priority:

(1) to pay uncompensated medical expenses in excess of those paid from the first \$400,000; and

(2) to pay for loss of income, future earning capacity, or other financial support not included in the first \$400,000.

No payment may be made to a survivor for loss of income under clause (2) unless and until all survivors have been fully paid for all medical expenses for which they are eligible under clause (1).

(c) If the available appropriation is insufficient to make full awards to all survivors eligible for a supplemental payment, the panel may award the payments based on a uniform percentage of the amount that is less than the full amount eligible for a supplemental payment or take other steps the panel considers necessary to ensure that the available appropriation is equitably distributed among all survivors who have requested and qualify for a supplemental payment, subject to the order of priority under this subdivision.

Subd. 13. Release. A survivor who accepts an offer of settlement from the panel must agree in writing and in a form developed by the panel, with the approval of the attorney general, to release the state and every municipality of this state and their employees from liability, including claims for damages, arising from the catastrophe and to cooperate with the state in pursuing claims the state may have against any other party. The release must also provide that the survivor will indemnify the state, a municipality, and their employees from any claim of contribution or indemnity, or both, made by other persons against the state, a municipality, and their employees and that the survivor will satisfy any judgment obtained by the survivor in an action against other persons to the extent of the release, if the claim or judgment relates in any way to a claim of the survivor arising from the catastrophe. The release must provide for the subrogation interest of the state under section 3.7394, subdivision 5. A survivor who previously has commenced an administrative, court, or other action against the state or a municipality of the state or their employees seeking recovery from loss resulting from the catastrophe must agree to dismiss or otherwise withdraw the action before receiving compensation under this section.

Subd. 14. Payment. The panel shall promptly forward to the commissioner of finance documentation of each settlement agreement that has been entered into under this section. Except as provided in section 3.7394, subdivision 4, paragraph (b), the

commissioner of finance shall pay the agreed amount within 45 days after receiving the documentation and in the order in which the documentation from the panel was received.

Subd. 15. Election to proceed in district court. (a) A survivor may elect not to file a claim with the panel or not to accept an offer of settlement from the panel. A survivor who elects not to file a claim with the panel or not to accept an offer of settlement has not waived any legal rights that may be asserted against the state or a municipality or their employees and may proceed with a claim in district court.

(b) If a survivor elects not to accept an offer of settlement, the state or a municipality or their employees may not use any data provided by the survivor to the panel in a subsequent legal proceeding. The state or a municipality or their employees may obtain information, including data provided to the panel, through discovery or other legal processes.

**Sec. 5. [3.7394] EFFECT OF SPECIAL COMPENSATION PROCESS;
RELATIONSHIP TO OTHER LAW.**

Subdivision 1. No state liability or duty created. The establishment of the special compensation process under section 3.7393 and the emergency relief fund, and an offer of settlement or a settlement agreement, is not an admission of liability by the state or a municipality or their employees and does not establish a duty of the state, a municipality, or their employees to compensate survivors. The creation and funding of the compensation process under sections 3.7391 to 3.7394 or an offer of settlement or settlement agreement is not admissible in a judicial or administrative proceeding to establish liability or a legal duty.

Subd. 2. Payments as additional compensation. Payments made under section 3.7393 or from the emergency relief fund are intended to supplement and be in addition to any payments required to be made by a third party under law or contract.

Subd. 3. Payments from other sources. Notwithstanding any statutory or common law or agreement to the contrary, a person required to make payments, including future payments, to a survivor may not eliminate or reduce those payments as a result of compensation paid to the survivor under section 3.7393 or from the emergency relief fund or as a result of the survivor's release of claims against the state, a municipality, or their employees under section 3.7393. The obligation of any person other than the state to make payments to a survivor is primary as compared to any payment made or to be made under section 3.7393 or from the emergency relief fund. The persons referenced in and covered by this subdivision and subdivision 4 include, without limitation:

(1) reparation obligors, as defined in section 65B.43, subdivision 9, whether they are insurers or self-insurers;

(2) health plan companies, as defined in section 62Q.01, subdivision 4, including the Minnesota Comprehensive Health Association created under section 62E.10;

(3) insurance companies, as defined in section 60A.02, subdivision 4;

(4) self-insured pools of political subdivisions organized under section 471.617 or 471.981, including service cooperatives pools organized under section 123A.21;

(5) risk retention groups, as defined in section 60E.02, subdivision 12;

(6) joint self-insurance plans governed by chapter 60F;

(7) workers' compensation insurers and private self-insurers, as defined in section 79.01;

(8) the Minnesota Life and Health Insurance Guaranty Association governed by chapter 61B;

(9) the Minnesota Insurance Guaranty Association governed by chapter 60C;

(10) the Minnesota Joint Underwriting Association governed by chapter 62I;

(11) all insurers providing credit life, credit accident and health, and credit involuntary unemployment insurance under chapter 62B, but also including those coverages written in connection with real estate mortgage loans and those provided to borrowers at no additional cost;

(12) the Minnesota unemployment insurance program provided under chapter 268;

(13) coverage offered by the state under medical assistance, general assistance medical care, and MinnesotaCare; and

(14) any other plan providing health, life, disability income, or long-term care coverage.

Subd. 4. No third-party subrogation or recovery. (a) Notwithstanding any statutory or common law or agreement to the contrary, a person who has paid benefits or compensation to or on behalf of a survivor does not have a subrogation or other right to recover those benefits or compensation by making a claim, or recovering from payments made, under section 3.7393 or from the emergency relief fund.

(b) Following a settlement agreement under section 3.7393, a person who believes that the state cannot constitutionally prohibit assertion of a subrogation claim and who is claiming a subrogation interest against the amount to be paid by the state has 40 days after the settlement agreement was entered into to provide notice to the state and the survivor of the person's intent to assert that interest, during which time the commissioner of finance must not make the payment. The subrogation claim is waived if the notice is not provided by the deadline. If no notice is received by the deadline, the commissioner of finance shall

9.1 make the payment. If a notice of claim is received, the commissioner shall withhold the
9.2 payment until the subrogee abandons or waives the subrogation claim.

9.3 Subd. 5. **Reimbursement of state; right of subrogation.** (a) Notwithstanding any
9.4 statutory or common law to the contrary, the state is entitled to recover from any third
9.5 party, including an agent, contractor, or vendor retained by the state, any payments made
9.6 from the emergency relief fund or under section 3.7393 to the extent the third party caused
9.7 or contributed to the catastrophe. The state is entitled to be reimbursed regardless of
9.8 whether the survivor is fully compensated.

9.9 (b) Notwithstanding any statutory or common law to the contrary, the state is
9.10 subrogated to all potential claims against third-party tortfeasors of a survivor receiving
9.11 payment from the emergency relief fund or under section 3.7393 to the extent the claims
9.12 relate to, involve, or arise out of the catastrophe. The subrogation right of the state under
9.13 this subdivision is limited to the amount paid to the survivor from the emergency relief
9.14 fund and under section 3.7393. The rights of the state under this subdivision are in
9.15 addition to other remedies, claims, and rights relating to the catastrophe that the state may
9.16 have against other persons for the recovery of monetary or other relief.

9.17 (c) A survivor must notify the state if the survivor has been fully compensated by
9.18 third parties for damages caused by the catastrophe. A survivor is fully compensated if
9.19 payments made or required to be made to the survivor by a third-party tortfeasor under the
9.20 terms of a settlement agreement or other agreement with the survivor or a final judgment
9.21 in favor of the survivor concerning claims that relate to, involve, or arise out of the
9.22 catastrophe are equal to or greater than the total damages incurred by the survivor as
9.23 determined by the panel under section 3.7393, subdivision 10. The state is entitled to be
9.24 reimbursed by a survivor only to the extent that these payments are greater than the total
9.25 damages incurred by the survivor.

9.26 Subd. 6. **Amounts not considered for purposes of limit on government tort**
9.27 **liability.** Payments made to survivors under section 3.7393 or from the emergency relief
9.28 fund are not to be considered in calculating the \$1,000,000 limit on tort claims in civil
9.29 actions against the state arising out of the catastrophe for purposes of section 3.736,
9.30 subdivision 4, clause (e), or a municipality arising out of the catastrophe for purposes of
9.31 section 466.04, subdivision 1, clause (5).

9.32 **Sec. 6. APPROPRIATIONS.**

9.33 Subdivision 1. **Compensation to survivors.** \$24,000,000 is appropriated from
9.34 the general fund to the commissioner of finance to make payments under settlement

H.F. No. 2553, 5th Engrossment - 2007-2008th Legislative Session (2007-2008)

10.1 agreements entered into by the panel under Minnesota Statutes, section 3.7393,
10.2 subdivision 11. This appropriation is available until June 30, 2010.

10.3 Subd. 2. **Supplemental payments.** \$12,640,000 is appropriated from the general
10.4 fund to the commissioner of finance to make supplemental payments under Minnesota
10.5 Statutes, section 3.7393, subdivision 12. This appropriation is available until June 30,
10.6 2010.

10.7 Subd. 3. **Administrative expenses.** \$750,000 is appropriated from the general
10.8 fund to the commissioner of finance to pay salaries, expenses, and administrative costs
10.9 associated with making offers of settlement and entering into settlement agreements under
10.10 Minnesota Statutes, section 3.7393. This appropriation is available until June 30, 2009.

10.11 Subd. 4. **Waite House.** \$610,000 is appropriated from the general fund to the
10.12 commissioner of finance for a grant to Pillsbury United Communities in Minneapolis, to
10.13 allow Waite House in Minneapolis to provide services to youth and families of youth who
10.14 were on a school bus on the I-35W bridge when the bridge collapsed. Services paid for
10.15 with this appropriation must not be services that could have been funded by settlement
10.16 payments made to survivors. The commissioner must pay the first half of the grant by
10.17 June 30, 2008, and pay the second half of the grant on June 30, 2009. Pillsbury United
10.18 Communities must report to the chairs of the senate Finance and house Ways and Means
10.19 Committees by June 30, 2009, and June 30, 2010, on expenditure of money under this
10.20 subdivision. The appropriation is available until June 30, 2010.

10.21 Subd. 5. **Report.** The commissioner of finance must report to the legislature by
10.22 January 15 in each of 2009, 2010, and 2011, on expenditure of the appropriations in this
10.23 section. The report must list the amount of compensation paid to each survivor and must
10.24 list administrative expenses incurred by the special master panel.

10.25 Sec. 7. **EFFECTIVE DATE.**

10.26 This act is effective the day following final enactment.