SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 3346

(SENATE AUTHORS: BAHR)

DATE	D-PG	OFFICIAL STATUS
05/18/2023	8940	Introduction and first reading Referred to Judiciary and Public Safety

A bill for an act

relating to civil liability; prohibiting immunity for government employee torts; proposing coding for new law in Minnesota Statutes, chapter 3.

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

Section 1. **[3.7397] TORTS BY GOVERNMENT EMPLOYEES; CIVIL LIABILITY.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Government" means the state, a county, municipality, or other political subdivision within the state.

(c) "Government employee" means an individual employed or contracted by a governmental employer.

(d) "Governmental employer" means an executive, legislative, or judicial agency of the state including any department, board, commission, authority, institution, or instrumentality of the state or of a county, municipality, or other political subdivision.

Subd. 2. **State liability.** (a) Notwithstanding section 3.736 and chapter 466, a governmental employer shall be liable for an injury caused by an act or omission of a government employee who, under the color of law, violates an individual's right under the Constitution or laws of the United States or under the Constitution or laws of Minnesota. An individual may seek legal, equitable, or other relief in a court in Minnesota or any other jurisdiction in the United States.

(b) The proper defendant in an action is the governmental employer of the government employee whose act or omission is the subject of a claim under this section, and not the

government employee. A government employee shall not be financially liable for a violation of an individual's right under the Constitution or laws of the United States or under the Constitution or laws of Minnesota.

(c) A governmental employer shall notify the government employee whose act or omission is the subject of a claim under this section within ten days of the governmental employer being served. The government employee has an unconditional right to intervene in the action as a third-party defendant pursuant to the Minnesota Rules of Civil Procedure and Minnesota Court Rules.

Subd. 3. **Immunity; relationship to other law.** (a) A claim under this section is not subject to the following limitations on liability:

(1) common law doctrines of immunity;

(2) federal doctrines of qualified immunity;

(3) sovereign immunity, governmental immunity, custom, or policy; or

(4) statutory immunities and limitations on liability or damages.

(b) Nothing in this section abrogates judicial or legislative immunity at any level of government.

(c) Notwithstanding the Minnesota Rules of Civil Procedure and Minnesota Court Rules, a class action is prohibited for a claim under this section.

Subd. 4. **Statute of limitations.** A claim under this section shall commence no later than three years from the date an individual can bring a claim for the deprivation of a right under the Constitution or laws of the United States or under the Constitution or laws of Minnesota.

Subd. 5. **Jurisdiction; procedure.** (a) An action under this section arises out of state law. Jurisdiction is in the judicial system of the state pursuant to state laws and rules of civil procedure.

(b) A plaintiff bears the burden of proving a violation of a right under the Constitution or laws of the United States or under the Constitution or laws of Minnesota by a preponderance of the evidence.

(c) A court order on a claim under this section shall be supported by findings of facts and conclusions of law. A court shall make findings of fact in a bench trial and a jury shall make findings of fact in a jury trial. A court shall make conclusions of law.

(d) When evaluating a government employee's use of force under the Constitution of the United States or the Constitution of Minnesota, a court's determination of reasonableness

must be objective and made from the perspective of a reasonable government employee confronted with the immediate facts and circumstances of the claim. A court must not determine reasonableness based on facts and circumstances of a claim that are later discovered. A court must recognize that a government employee must often make split-second decisions in tense, uncertain, and rapidly evolving situations.

Subd. 6. **Fees.** (a) In a proceeding in which a plaintiff's claim prevails, the government shall be liable for reasonable attorney fees and other litigation costs. Reasonable attorney fees include those incurred on an hourly or contingency basis, or by an attorney providing services on a pro bono basis. A court shall recognize that a plaintiff's claim prevails if the plaintiff obtains any relief the plaintiff seeks in its complaint, whether the relief is obtained via judgment, settlement, or a governmental employer's voluntary change in behavior.

(b) Under the Minnesota Rules of Civil Procedure, a court may dismiss a frivolous claim and may award reasonable attorney fees and costs to a defendant for defending against a frivolous claim.

Subd. 7. **Termination of employment or contract.** Notwithstanding any other law, a court's finding that a government employee violated an individual's right under the Constitution or laws of the United States or under the Constitution or laws of Minnesota under this section is per se evidence that the governmental employer has just cause for terminating the contract, agreement, or employment of the government employee. A government's termination of a contract, agreement, or employment with a government employee shall not affect the government's liability under this section.

Subd. 8. **Public information.** All documents, including complaints, judgments, settlements, and consent decrees, are subject to public disclosure.

EFFECTIVE DATE. This section is effective the day following final enactment.