

CHAPTER 115B

ENVIRONMENTAL COMPENSATION AND LIABILITY

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115B.05 LIABILITY FOR ECONOMIC LOSS, DEATH, PERSONAL INJURY AND DISEASE; LIMITATIONS AND DEFENSES.

Subdivision 1. **Liability.** Except as otherwise provided in subdivisions 2 to 10, and notwithstanding any other provision or rule of law, any person who is responsible for the release of a hazardous substance from a facility is strictly liable for the following damages which result from the release or to which the release significantly contributes:

(a) all damages for actual economic loss including:

(1) any injury to, destruction of, or loss of any real or personal property, including relocation costs;

(2) any loss of use of real or personal property;

(3) any loss of past or future income or profits resulting from injury to, destruction of, or loss of real or personal property without regard to the ownership of the property; and

(b) all damages for death, personal injury, or disease including:

(1) any medical expenses, rehabilitation costs or burial expenses;

(2) any loss of past or future income, or loss of earning capacity; and

(3) damages for pain and suffering, including physical impairment.

[For text of subs 2 to 10, see M.S.1984]

History: *1Sp1985 c 8 s 1*

115B.055 EFFECT OF REMOVING AND REPEALING CERTAIN PROVISIONS.

Subdivision 1. **Joint and several liability for personal injury.** The enactment of Laws 1983, chapter 121, section 5, relating to joint and several liability, and the subsequent amendment of section 115B.05 as provided in this act, shall not be construed in any way as a determination of legislative intent regarding the applicability of joint and several liability in any action brought under section 115B.05. The determination of whether joint and several liability applies in any action brought under section 115B.05 shall be based solely on applicable statutory and common law.

Subd. 2. **Causation of personal injury.** In any action brought under section 115B.05, or under any other law, to recover damages for death, personal injury, or disease arising out of the release of a hazardous substance, the enactment of Laws 1983, chapter 121, section 7, and subsequent repeal of section 115B.07 under this act, relating to proof of causation, shall not be construed in any way as a

determination of legislative intent regarding the legal principles applicable to the proof of the causal connection between the release and the death, injury, or disease. The legal principles applicable to the proof of causation shall be determined solely on the basis of applicable statutory and common law.

History: *1Sp1985 c 8 s 17*

115B.06 APPLICATION TO PAST ACTIONS.

Subdivision 1. **Application of section 115B.05.**

Section 115B.05 does not apply to any claim for damages arising out of the release of a hazardous substance which was placed or came to be located in or on the facility wholly before July 1, 1983.

Subd. 2. [Repealed, 1Sp1985 c 8 s 19]

History: *1Sp1985 c 8 s 2*

115B.07 [Repealed, 1Sp1985 c 8 s 19]

115B.09 LIABILITY UNDER SECTION 115B.05; COMPARATIVE FAULT AND CONTRIBUTION.

The provisions of sections 604.01, 604.02, subdivisions 1 and 2, apply to any action for damages under section 115B.05.

History: *1Sp1985 c 8 s 3*

115B.25 DEFINITIONS.

Subdivision 1. **General.** The terms used in sections 115B.25 to 115B.37 have the definitions given them in section 115B.02 and this section.

Subd. 2. **Board.** "Board" means the hazardous substance injury compensation board established in section 115B.27.

Subd. 3. **Compensable loss.** "Compensable loss" means a loss that is compensable under section 115B.34.

Subd. 4. **Eligible person.** "Eligible person" means a person who is eligible to file a claim with the fund under section 115B.29.

Subd. 5. **Eligible personal injury.** "Eligible personal injury" means personal injury that is eligible for compensation under section 115B.30.

Subd. 6. **Eligible property damage.** "Eligible property damage" means property damage that is eligible for compensation under section 115B.30.

Subd. 7. **Fund.** "Fund" means the hazardous substance injury compensation fund established in section 115B.26.

Subd. 8. **Protected information.** "Protected information" means information provided to the board by a nongovernmental third party, or information provided to the board by a governmental party if access to that information is protected under other law, that is relevant to a determination required of the board under section 115B.33, subdivisions 1, clauses (2) to (4), and 2, clause (2).

History: *1Sp1985 c 8 s 4*

115B.26 HAZARDOUS SUBSTANCE INJURY COMPENSATION FUND.

Subdivision 1. **Establishment.** A hazardous substance injury compensation fund is established as an account in the state treasury. Earnings, such as interest,

dividends, and any other earnings arising from fund assets, must be credited to the fund.

Subd. 2. **Appropriation.** The amount necessary to pay for staff assistance, administrative services, and office space under section 115B.28, subdivision 4, and to pay claims of compensation granted by the board under sections 115B.25 to 115B.37 is appropriated to the board from the hazardous substance injury compensation fund.

Subd. 3. **Payment of claims when fund insufficient.** If the amount of the claims granted exceeds the amount in the fund, the board shall request a transfer from the general contingent account to the hazardous substance injury compensation fund as provided in section 3.30. If no transfer is approved, the board shall pay the claims which have been granted in the order granted only to the extent of the money remaining in the fund. The board shall pay the remaining claims which have been granted after additional money is credited to the fund.

History: 1Sp1985 c 8 s 5

115B.27 HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD.

Subdivision 1. **Establishment of board.** The hazardous substance injury compensation board is established. The board consists of five members who will serve part time and who will be appointed by the governor with the advice and consent of the senate. One member must be a physician knowledgeable in toxicology; one member must be a member of the bar of this state; one member must be a health professional knowledgeable in the area of hazardous substance injuries; and two members must be members of the general public. The board shall annually elect a member to serve as chairman for a term of one year. Filling of vacancies on the board and removal of members are governed by section 15.0575.

Subd. 2. **Membership terms.** The initial members shall be appointed to terms as follows:

- (1) two members appointed for six years;
- (2) two members appointed for four years;
- (3) the fifth member appointed for two years.

At the end of each member's term, the successor shall be appointed for six years and each successor thereafter shall be appointed for six years.

Subd. 3. **Compensation and expenses.** Notwithstanding the provisions of section 15.0575, the commissioner of employee relations shall establish the compensation to be paid members of the board, based on the professional expertise and experience of the members. Expenses shall be paid as provided in the plan for state employees adopted under section 43A.18, subdivision 2.

History: 1Sp1985 c 8 s 6

115B.28 POWERS AND DUTIES OF THE BOARD.

Subdivision 1. **Duties.** In addition to performing duties specified in sections 115B.25 to 115B.37 or in other law, and subject to the limitations on disclosure contained in section 115B.35, the board shall:

- (1) adopt rules as soon as practicable after all members are appointed, including rules governing practice and procedure before the board, the form and procedure for applications for compensation, and procedures for claims investigations;
- (2) publicize the availability of compensation and application procedures on a statewide basis with special emphasis on geographical areas surrounding sites

identified by the pollution control agency as having releases from a facility where a hazardous substance was placed or came to be located prior to July 1, 1983;

(3) collect, analyze, and make available to the public, in consultation with the department of health, the pollution control agency, the University of Minnesota medical and public health schools, and the medical community, data regarding injuries relating to exposure to hazardous substances; and

(4) prepare and transmit by December 31 of each year to the governor and the legislature an annual report to include (a) a summary of board activity under clause (3); (b) data determined by the board from actual cases, including but not limited to number of cases, actual compensation received by each claimant, types of cases, and types of injuries compensated, as they relate to types of hazardous substances as well as length of exposure, but excluding identification of the claimants; (c) all administrative costs associated with the business of the board; and (d) board recommendations for legislative changes, further study, or any other recommendation aimed at improving the system of compensation.

Subd. 2. Powers. In addition to exercising any powers specified in sections 115B.25 to 115B.37 or in other law, the board may:

(1) in reviewing a claim, consider any information relevant to the claim, in accordance with the evidentiary standards contained in section 115B.35;

(2) contract for consultant or other services necessary to carry out the board's duties under sections 115B.25 to 115B.37;

(3) grant reasonable partial compensation on an emergency basis pending the final decision on a claim, subject to the adoption of rules by the board, if the claim is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made;

(4) limit access to information collected and maintained by the board and take any other action necessary to protect privileged or confidential information, in accordance with the limitations contained in section 115B.35.

Subd. 3. Investigation; obtaining information. The board may investigate any claim for compensation and for this purpose it may require from the claimant and request from any person information regarding any matter, fact, or circumstance which is relevant to determination of a claim under section 115B.33. In exercising its powers under this subdivision, the board may collect information reasonably calculated to lead to the discovery of evidence admissible under section 115B.35. The board shall reimburse the person requested to provide information the actual cost of copies of documents, papers, samples, or other tangible items necessary to respond to the request from the board. In order to obtain this information the board, subject to any applicable privilege, may:

(a) request any person to produce documents, papers, books, or other tangible things in the possession, custody, or control of that person;

(b) request the sworn testimony of any person as to any relevant fact or opinion;

(c) direct written questions to any person and request written answers and objections;

(d) request a mental or physical examination of the claimant or autopsy of any deceased person whose death is the basis of the claim, provided that notice is given to the claimant and the claimant receives a copy of the report; and

(e) request a waiver of medical privilege by the claimant.

The board shall give written notice of any request under this subdivision at least 15 days before the person is expected to comply with the request. If a person fails or refuses to comply with a request for information relevant to the release of a

hazardous substance, the board may issue a subpoena for the production of the information and may petition the district court for an order enforcing the subpoena. If a person fails or refuses to comply with a request for other information relevant to determination of the claim, the board may petition the district court for an order to compel compliance with the request. If the claimant refuses to comply with a request by the board for information relevant to the claim, the board may dismiss the claim.

Subd. 4. Administrative personnel and services. The commissioner of health shall provide staff assistance, administrative services, and office space under a contract with the board. The board shall reimburse the commissioner for the staff, services, and space provided. In order to perform its duties, the board may request information from the supervising officer of any state agency or state institution of higher education. The supervising officer shall comply with the board's request to the extent possible considering available agency or institution appropriations and may assign agency or institution employees to assist the board in performing its duties under sections 115B.25 to 115B.37.

History: *1Sp1985 c 8 s 7*

115B.29 ELIGIBLE PERSONS.

Subdivision 1. Personal injury and certain property claims. A person may file a claim with the board pursuant to this section for compensation for an eligible injury, or for eligible property damage described in section 115B.34, subdivision 2, paragraph (a), clause (1), that could reasonably have resulted from an exposure in Minnesota to a hazardous substance released from a facility.

Subd. 2. Other property claims. A person may file a claim with the board pursuant to this section for eligible property damage described in section 115B.34, subdivision 2, paragraph (a), clause (2), that could reasonably have resulted from a release of a hazardous substance, if:

(1) the persons responsible for the release of the hazardous substance are unknown or cannot with reasonable diligence be determined or located; or

(2) a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release of the hazardous substance.

History: *1Sp1985 c 8 s 8*

115B.30 ELIGIBLE INJURY AND DAMAGE.

Subdivision 1. Eligible personal injury. (a) A personal injury which could reasonably have resulted from exposure to a hazardous substance released from a facility where it was placed or came to be located is eligible for compensation from the fund if:

(1) it is a medically verified chronic or progressive disease, illness, or disability such as cancer, organic nervous system disorders, or physical deformities, including malfunctions in reproduction, in humans or their offspring, or death; or

(2) it is a medically verified acute disease or condition that typically manifests itself rapidly after a single exposure or limited exposures and the persons responsible for the release of the hazardous substance are unknown or cannot with reasonable diligence be determined or located or a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release of the hazardous substance.

(b) A personal injury is not compensable from the fund if:

- (1) the injury is compensable under the workers' compensation law, chapter 176;
- (2) the injury arises out of the claimant's use of a consumer product;
- (3) the injury arises out of an exposure that occurred or is occurring outside the geographical boundaries of the state;
- (4) the injury results from the release of a hazardous substance for which the claimant is a responsible person; or
- (5) the injury is an acute disease or condition other than one described in paragraph (a).

Subd. 2. **Eligible property damage.** Damage to real property in Minnesota owned by the claimant is eligible for compensation from the fund if the damage results from the presence in or on the property of a hazardous substance released from a facility where it was placed or came to be located. Damage to property is not eligible for compensation from the fund if it results from the release of a hazardous substance for which the claimant is a responsible person.

Subd. 3. **Time for filing claim.** A claim is not eligible for compensation from the fund unless it is filed with the board within the time provided in this subdivision.

(a) A claim for compensation for personal injury must be filed within two years after the injury and its connection to exposure to a hazardous substance was or reasonably should have been discovered.

(b) A claim for compensation for property damage must be filed within six years after the damage was or reasonably should have been discovered.

Notwithstanding the provisions of this subdivision, claims for compensation that would otherwise be barred by any statute of limitations provided in sections 115B.25 to 115B.37 may be filed not later than January 1, 1988.

History: *1Sp1985 c 8 s 9*

115B.31 OTHER ACTIONS.

Subdivision 1. **Subsequent action or claim prohibited in certain cases.** (a) A person who has settled a claim for an eligible injury or eligible property damage with a responsible person, either before or after bringing an action in court for that injury or damage, may not file a claim with the fund for the same injury or damage. A person who has received a judgment in his favor in a court action for an eligible injury or eligible property damage may not file a claim with the fund for the same injury or damage, unless the judgment cannot be satisfied in whole or in part against the persons responsible for the release of the hazardous substance. A person who has filed a claim with the board may not file another claim with the board for the same eligible injury or damage, unless the claim was inactivated by the board as provided in section 115B.32, subdivision 1.

(b) A person who has filed a claim with the board for an eligible injury or damage, and who has received and accepted an award from the board, is precluded from bringing an action in court for the same eligible injury or damage.

(c) A person who files a claim with the board for personal injury or property damage must include all known claims eligible for compensation in one proceeding before the board.

Subd. 2. **Use of protected information and board findings.** The findings and decision of the board are inadmissible in any court action. Protected information may not be used in any court action except to the extent that the information is otherwise available to a party or discovered under the applicable rules of civil or criminal procedure.

Subd. 3. **Subrogation by state.** The state is subrogated to all the claimant's rights under statutory or common law to recover losses compensated from the fund from other sources, including responsible persons as defined in section 115B.03. The state may bring a subrogation action in its own name or in the name of the claimant. The state may not bring a subrogation action against a person who was a party in a court action by the claimant for the same eligible injury or damage, unless the claimant dismissed the action prior to trial. Money recovered by the state under this subdivision must be deposited in the fund. Nothing in sections 115B.25 to 115B.37 shall be construed to create a standard of recovery in a subrogation action.

Subd. 4. **Simultaneous claim and court action prohibited.** A claimant may not commence a court action to recover for any injury or damage for which the claimant seeks compensation from the fund during the time that a claim is pending before the board. A person may not file a claim with the board for compensation for any injury or damage for which the claimant seeks to recover in a pending court action. The time for filing a claim under section 115B.30 or the statute of limitations for any civil action is suspended during the period of time that a claimant is precluded from filing a claim or commencing an action under this subdivision.

History: 1Sp1985 c 8 s 10

115B.32 CLAIM FOR COMPENSATION.

Subdivision 1. **Form.** A claim for compensation from the fund must be filed with the board in the form required by the board. When a claim does not include all the information required by subdivision 2 and applicable board rules, the board staff shall notify the claimant of the absence of the required information within 14 days of the filing of the claim. All required information must be received by the board not later than 60 days after the claimant received notice of its absence or the claim will be inactivated and may not be resubmitted for at least one year following the date of inactivation. The board may decide not to inactivate a claim under this subdivision if it finds serious extenuating circumstances.

Subd. 2. **Required information.** A claimant must provide the following information as part of the claim, provided that nothing in Laws 1985, First Special Session chapter 8 shall be construed to require the claimant to initiate a court action before filing a claim:

(1) a sworn verification by the claimant of the facts set forth in the claim to the best of the claimant's knowledge;

(2) evidence that the claimant is an eligible person;

(3) evidence of the claimant's exposure to a named hazardous substance;

(4) evidence that the claimant's exposure to the substance in the amount and duration experienced by the claimant could reasonably have been caused or significantly contributed to by the release of a hazardous substance from a facility where the substance was placed or came to be located, to the extent the information is available to the claimant;

(5) evidence that the exposure experienced by the claimant can cause or can significantly contribute to the injury suffered by the claimant;

(6) evidence of the injury eligible for compensation suffered by the claimant and the compensable losses resulting from the injury;

(7) evidence of any property damage eligible for compensation and the amount of compensable losses resulting from the damage;

(8) information regarding any collateral sources of compensation; and

(9) other information required by the rules of the board.

Subd. 3. **Death claims.** In any case in which death is claimed as a compensable injury, the claim may be brought on behalf of the claimant by the claimant's estate for compensable medical expenses and by the claimant's trustee for death benefits for the claimant's dependents as defined in section 176.111.

History: *1Sp1985 c 8 s 11*

115B.33 DETERMINATION OF CLAIM.

Subdivision 1. **Standard for personal injury.** The board shall grant compensation to a claimant who shows that it is more likely than not that:

(1) the claimant suffers a medically verified injury that is eligible for compensation from the fund and that has resulted in a compensable loss;

(2) the claimant has been exposed to a hazardous substance;

(3) the release of the hazardous substance from a facility where the substance was placed or came to be located could reasonably have resulted in the claimant's exposure to the substance in the amount and duration experienced by the claimant; and

(4) the injury suffered by the claimant can be caused or significantly contributed to by exposure to the hazardous substance in an amount and duration experienced by the claimant.

Subd. 2. **Standard for property damage.** The board shall grant compensation to a claimant who shows that it is more likely than not that:

(1) the claimant has suffered property damage that is eligible for compensation and that has resulted in compensable loss; and

(2) the presence of the hazardous substance in or on the property could reasonably have resulted from the release of the hazardous substance from a facility where the substance was placed or came to be located.

History: *1Sp1985 c 8 s 12*

115B.34 COMPENSABLE LOSSES.

Subdivision 1. **Personal injury losses.** Losses compensable by the fund for personal injury are limited to:

(a) medical expenses directly related to the claimant's injury;

(b) up to two-thirds of the claimant's lost wages not to exceed \$2,000 per month or \$24,000 per year;

(c) up to two-thirds of a self-employed claimant's lost income, not to exceed \$2,000 per month or \$24,000 per year;

(d) death benefits to dependents which the board shall define by rule subject to the following conditions:

(1) the rule adopted by the board must establish a schedule of benefits similar to that established by section 176.111 and must not provide for the payment of benefits to dependents other than those dependents defined in section 176.111;

(2) the total benefits paid to all dependents of a claimant must not exceed \$2,000 per month;

(3) benefits paid to a spouse and all dependents other than children must not continue for a period longer than ten years;

(4) payment of benefits is subject to the limitations of section 115B.36; and

(e) the value of household labor lost due to the claimant's injury or disease, which must be determined in accordance with a schedule established by the board by rule, not to exceed \$2,000 per month or \$24,000 per year.

Subd. 2. Property damage losses. (a) Losses compensable by the fund for property damage are limited to the following losses caused by damage to the principal residence of the claimant:

(1) the reasonable cost of replacing or decontaminating the primary source of drinking water for the property not to exceed the amount actually expended by the claimant or assessed by a local taxing authority, if the department of health has determined that the water is contaminated or has included the property in a well advisory area and has certified that the replacement or decontamination of the source of drinking water effectively has or will eliminate the contamination, up to a maximum of \$25,000; and

(2) losses incurred as a result of a bona fide sale of the property at less than the appraised market value under circumstances that constitute a hardship to the owner, limited to 75 percent of the difference between the appraised market value and the selling price, but not to exceed \$25,000.

(b) For purposes of paragraph (a), the following definitions apply:

(1) "appraised market value" means an appraisal of the market value of the property disregarding any decrease in value caused by the presence of a hazardous substance in or on the property; and

(2) "hardship" means an urgent need to sell the property based on a special circumstance of the owner including catastrophic medical expenses, inability of the owner to physically maintain the property due to a physical or mental condition, and change of employment of the owner or other member of the owner's household requiring the owner to move to a different location.

(c) Appraisals are subject to board approval. The board may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision.

History: *1Sp1985 c 8 s 13*

115B.35 DETERMINATION OF CLAIMS.

Subdivision 1. Assignment of claims. The chairman of the board shall assign each claim that has been accepted for filing to one member of the board, except that no claims shall be assigned to either of the two members appointed to the board as members of the general public.

Subd. 2. Treatment of protected information. In making a preliminary or final decision under this section, the board shall examine protected information outside of the presence of the claimant, the claimant's attorney, or any other person except staff to the board. The board, the board's staff, and any other person who obtains access to protected information under this section may not reveal protected information to any person except as provided in this section.

Subd. 3. Evidence admissible in claim proceedings. In the determination of a claim, the board may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. The board may exclude incompetent, irrelevant, immaterial, and repetitious evidence.

Subd. 4. Preliminary decision. The board member to whom the claim is assigned shall review all materials filed in support of the claim and may cause an

investigation to be conducted into the validity of the claim. The board member may make a preliminary decision on the basis of the papers filed in support of the claim and the report of any investigation of it. The decision must be in writing and include the reasons for the decision, subject to the limitations on disclosure of protected information.

Subd. 5. Circulation of preliminary decision. Copies of the preliminary decision made under subdivision 4 must be circulated to the other board members as soon as practicable. On receipt of the preliminary decision, the members have 20 days to challenge it by written notice to the members who made the decision. If no other member challenges the preliminary decision, a copy must be sent to the claimant who may challenge the decision by written notice to the board within 30 days of receipt of the decision. If the board member relies on protected information to deny a claim, the preliminary decision must include a statement to this effect. If no notice is received within the required time, the preliminary decision becomes a final decision of the board.

Subd. 6. Challenges. If a board member or a claimant challenges a preliminary decision made pursuant to subdivision 4, the full board shall order the claimant to appear before the board. The appearance is not a contested case hearing under chapter 14. The claimant may produce further evidence to support the claim, including books, studies, reports, and any other written material and oral testimony of witnesses, including experts. The board members may ask questions of the claimant and any witnesses presented by the claimant. After the appearance, the board shall make a final decision on the claim as soon as practicable. The decision must be in writing and include the reasons for the decision, subject to the limits on disclosure of protected information. A copy of each final decision must be sent to the claimant, including, for a claim that is granted, an explanation of the form in which the claim will be paid. If the final decision of the board relies on protected information to deny a claim, the decision shall include a statement to this effect. At the claimant's request, the board shall disclose to the claimant that portion of the protected information relied on by the board and shall provide the claimant with an opportunity to provide additional information relevant to the element of the standard that has not been demonstrated. The board shall make a final decision based on all available information.

Subd. 7. Record. Any appearance by a claimant or witnesses must be tape recorded but a formal record pursuant to chapter 14 is not required.

Subd. 8. Appeal. A final decision of the board made under this section is conclusive on all matters decided. There is no right to judicial review of a final decision of the board.

Subd. 9. Remedies and penalties. A board member, board staff person, or other person who reveals protected information in violation of this section is subject to the civil remedies contained in section 13.08 and the penalties in section 13.09.

History: *1Sp1985 c 8 s 14*

115B.36 AMOUNT AND FORM OF PAYMENT.

If the board decides to grant compensation, it shall determine the net uncompensated loss payable to the claimant by computing the total amount of compensable losses payable to the claimant and subtracting the total amount of any compensation received by the claimant for the same injury or damage from other sources including, but not limited to, all forms of insurance and social security and any emergency award made by the board. The board shall pay compensation in the amount of the net uncompensated loss, provided that no claimant may receive more

than \$250,000. In the case of a death, the total amount paid to all persons on behalf of the claimant may not exceed \$250,000.

Compensation from the fund may be awarded in a lump sum or in installments at the discretion of the board.

History: *1Sp1985 c 8 s 15*

115B.37 ATTORNEY FEES.

The board may by rule limit the fee charged by any attorney for representing a claimant before the board.

History: *1Sp1985 c 8 s 16*