

## CHAPTER 466

## TORT LIABILITY, POLITICAL SUBDIVISIONS

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**466.01 DEFINITIONS.**

Subdivision 1. **Municipality.** For the purposes of sections 466.01 to 466.15, "municipality" means any city, whether organized under home rule charter or otherwise, any county, town, public authority, public corporation, special district, school district, however organized, county agricultural society organized pursuant to chapter 38, joint powers board or organization created under section 471.59 or other statute, public library, regional public library system, multicounty multitype library system, or other political subdivision.

Subd. 2. For the purposes of sections 466.01 to 466.15, the "governing body of a town" means the board of supervisors thereof; "school district" includes an unorganized territory as defined in Minnesota Statutes 1961, section 120.02, subdivision 17.

Subd. 3. For the purposes of sections 466.01 to 466.15, "release" and "hazardous substance" have the meanings given in section 115B.02.

Subd. 4. For the purposes of sections 466.01 to 466.15, "day care facility" has the meaning given it in section 245.782, subdivision 5.

Subd. 5. For the purposes of sections 466.01 to 466.15, "provider" has the meaning given it in section 245.882, subdivision 12.

Subd. 6. **Employee, officer, or agent.** For the purposes of sections 466.01 to 466.15, "employee," "officer," or "agent" means a present or former employee, officer, or agent of a municipality, or other person acting on behalf of the municipality in an official capacity, temporarily or permanently, with or without compensation, but does not include an independent contractor. "Employee" includes court administrators and their staff under chapter 485, district administration staff in the second and fourth judicial districts, guardians ad litem, and other employees within the court system whose salaries are paid by the county, other than employees who remain on the county payroll under section 480.181, subdivision 2.

**History:** 1963 c 798 s 1; 1973 c 123 art 5 s 7; 1978 c 659 s 3; 1983 c 121 s 27; 1983 c 280 s 2; 1986 c 395 s 12,13; 1986 c 455 s 64; 1988 c 708 s 7; 1989 c 335 art 3 s 12

**466.02 TORT LIABILITY.**

Subject to the limitations of sections 466.01 to 466.15, every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

**History:** 1963 c 798 s 2; 1976 c 2 s 142

**466.03 EXCEPTIONS.**

Subdivision 1. **Scope.** Section 466.02 does not apply to any claim enumerated in this section. As to any such claim every municipality shall be liable only in accordance with the applicable statute and where there is no such statute, every municipality shall be immune from liability.

Subd. 2. [Repealed, 1987 c 346 s 18]

Subd. 3. **Tax claims.** Any claim in connection with the assessment and collection of taxes.

Subd. 4. **Accumulations of snow and ice.** Any claim based on snow or ice conditions on any highway or public sidewalk that does not abut a publicly owned building or publicly owned parking lot, except when the condition is affirmatively caused by the negligent acts of the municipality.

Subd. 5. **Execution of statute.** Any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a valid or invalid statute, charter, ordinance, resolution, or rule.

Subd. 6. **Discretionary acts.** Any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

Subd. 6a. **Driving under the influence; custody of motor vehicle.** Any claim for which recovery is prohibited by section 169.121, subdivision 9.

Subd. 6b. **Unimproved property.** Any claim based upon the condition of unimproved real property owned by the municipality.

Subd. 6c. **Water access sites.** Any claim based upon the construction, operation, or maintenance by a municipality of a water access site created by the iron range resources and rehabilitation board. A water access site under this subdivision that provides access to an idled, water filled mine pit also includes the entire water filled area of the pit, and, further, claims related to a mine pit water access site under this subdivision include those based upon the caving or slumping of mine pit walls.

Subd. 6d. **Licensing of providers.** A claim against a municipality based on the failure of a provider to meet the standards needed for a license to operate a day care facility, as defined in section 245.782, subdivision 5, for children, unless the municipality had actual knowledge of a failure to meet licensing standards that resulted in a dangerous condition that foreseeably threatened the plaintiff.

Subd. 6e. **Parks and recreation areas.** Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person.

Subd. 6f. **Beach or pool equipment.** (a) Subject to paragraphs (b) and (c), any claim based upon an injury arising out of the use by any person of a diving board, diving platform, diving raft, water slide, nonwater slide, or dock installed at a beach or swimming pool owned, leased, or operated by a municipality other than a school district, if the injury occurred when the beach or swimming pool was closed as indicated by a sign posted at the beach or pool.

(b) A municipality has a duty to use reasonable care to warn trespassers of any danger or risk involved with the use of beach or pool equipment described in paragraph (a) if the municipality:

(1) knows or has reason to know that trespassers regularly use certain portions of the beach or pool equipment;

(2) installs, operates, or maintains the equipment in a way known as likely to cause death or serious bodily harm; and

(3) has reason to believe trespassers would not discover the risks involved in the use of the equipment.

The requirements of this paragraph do not apply if a trespasser knows or has reason to know of the condition of the equipment and the risk involved in its use.

(c) Nothing in this subdivision limits the liability of a municipality for conduct that would entitle trespassing children to damages against a private person.

Subd. 7. **Other immunity.** Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute.

Subd. 8. Any claim for a loss other than injury to or loss of property or personal injury or death.

Subd. 9. Any claim for a loss of benefits or compensation due under a program of public assistance or public welfare, except where municipal compensation for loss is expressly required by federal law in order for the municipality to receive federal grants-in-aid.

Subd. 10. Any claim for a loss based on the failure of any person to meet the standards needed for a license, permit, or other authorization issued by the municipality or its agents.

Subd. 11. Any claim for a loss based on the usual care and treatment, or lack of care and treatment, of any person at a municipal hospital or corrections facility where reasonable use of available funds has been made to provide care.

Subd. 12. Any claim for a loss, damage, or destruction of property of a patient or inmate of a municipal institution.

Subd. 13. Any claim for a loss caused by the condition of unimproved real property owned by a municipality, which means land that the municipality has not improved, land that is owned or administered by the municipality that contains idled or abandoned mine pits or shafts, and appurtenances, fixtures, and attachments to land that the municipality has neither affixed nor improved.

Subd. 14. Any claim for a loss for which recovery is prohibited by section 169.121, subdivision 9.

Subd. 15. Any claim against a municipality, if the same claim would be excluded under section 3.736, if brought against the state.

Subd. 16. Any claim against a county, arising from the operation of an all-terrain vehicle on land administered by a county under chapter 280, 281, or 282, except that the county is liable for conduct that would entitle a trespasser to damages against a private person.

Subd. 17. **Logging roads.** Any claim arising out of a person's use of a logging road on public land that is maintained exclusively to provide access to timber on the land by harvesters of the timber, and is not signed or otherwise held out to the public as a public highway.

**History:** 1963 c 798 s 3; 1975 c 359 s 23; 1982 c 423 s 13; 1983 c 362 s 1; 1985 c 248 s 70; 1Sp1985 c 13 s 346; 1986 c 395 s 14; 1986 c 455 s 65-74; 1988 c 530 s 9,10; 1989 c 331 s 24; 1991 c 162 s 1; 1991 c 313 s 2

#### 466.04 MAXIMUM LIABILITY.

Subdivision 1. **Limits; punitive damages.** (a) Liability of any municipality on any claim within the scope of sections 466.01 to 466.15 shall not exceed:

(1) \$200,000 when the claim is one for death by wrongful act or omission and \$200,000 to any claimant in any other case;

(2) \$600,000 for any number of claims arising out of a single occurrence; or

(3) twice the limits provided in clauses (1) and (2) when the claim arises out of the release or threatened release of a hazardous substance, whether the claim is brought under sections 115B.01 to 115B.15 or under any other law.

(b) No award for damages on any such claim shall include punitive damages.

Subd. 1a. **Officers and employees.** The liability of an officer or an employee of any municipality for a tort arising out of an alleged act or omission occurring in the performance of duty shall not exceed the limits set forth in subdivision 1, unless the officer or employee provides professional services and also is employed in the profession for compensation by a person or persons other than the municipality.

Subd. 1b. **Total claim.** The total liability of the municipality on a claim against it and against its officers or employees arising out of a single occurrence shall not exceed the limits set forth in subdivision 1.

Subd. 2. **Inclusions.** The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

Subd. 3. **Disposition of multiple claims.** Where the amount awarded to or settled upon multiple claimants exceeds \$600,000, any party may apply to any district court to apportion to each claimant a proper share of the total amount limited by subdivision 1. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to each bears to the aggregate awards and settlements for all claims arising out of the occurrence.

**History:** 1963 c 798 s 4; 1976 c 264 s 1-3; 1983 c 121 s 28; 1983 c 331 s 2,3; 1986 c 444; 1989 c 325 s 50

#### 466.05 NOTICE OF CLAIM.

Subdivision 1. **Notice required.** Except as provided in subdivision 2, every person, whether plaintiff, defendant or third party plaintiff or defendant, who claims damages from any municipality or municipal employee acting within the scope of employment for or on account of any loss or injury within the scope of section 466.02 shall cause to be presented to the governing body of the municipality within 180 days after the alleged loss or injury is discovered a notice stating the time, place and circumstances thereof, the names of the municipal employees known to be involved, and the amount of compensation or other relief demanded. Actual notice of sufficient facts to reasonably put the governing body of the municipality or its insurer on notice of a possible claim shall be construed to comply with the notice requirements of this section. Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by the municipality. The time for giving such notice does not include the time, during which the person injured is incapacitated by the injury from giving the notice.

Subd. 2. **Claims for wrongful death; notice.** When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death; if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived an action for wrongful death may be brought without any additional notice.

**History:** 1963 c 798 s 5; 1974 c 311 s 1; 1976 c 264 s 4,5; 1986 c 444; 1986 c 455 s 75; 1991 c 199 art 1 s 74

#### 466.06 LIABILITY INSURANCE.

The governing body of any municipality may procure insurance against liability of the municipality and its officers, employees, and agents for damages, including punitive damages, resulting from its torts and those of its officers, employees, and agents, including torts specified in section 466.03 for which the municipality is immune from liability. The insurance may provide protection in excess of the limit of liability imposed by section 466.04. If a municipality other than a school district has the authority to levy taxes, the premium costs for such insurance may be levied in excess of any per capita or local tax rate tax limitation imposed by statute or charter. Any independent board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance with respect to the field of its operation. The procurement of such insurance constitutes a waiver of the limits of governmental liability under section 466.04 only to the extent that valid and collectible insurance, including where applicable, proceeds from the Minnesota Guarantee Fund, exceeds those limits and covers the claim. The purchase of insurance has no other effect on the liability of the municipality or its employees. Procurement of commercial insurance, participation in a self-insurance pool pursuant to section 471.981, or provision for an individual self-

insurance plan with or without a reserve fund or reinsurance shall not constitute a waiver of any governmental immunities or exclusions.

**History:** 1963 c 798 s 6; 1977 c 447 art 6 s 11; 1983 c 314 art 6 s 30; 1984 c 463 art 6 s 12; 1987 c 79 s 1; 1987 c 260 s 1; 1987 c 344 s 9; 1987 c 398 art 1 s 22; 1988 c 719 art 5 s 84; 1Sp1989 c 1 art 2 s 11; 1992 c 513 art 4 s 44

#### **466.07 INDEMNIFICATION.**

Subdivision 1. **Indemnification required.** Subject to the limitations in section 466.04, a municipality or an instrumentality of a municipality shall defend and indemnify any of its officers and employees, whether elective or appointive, for damages, including punitive damages, claimed or levied against the officer or employee, provided that the officer or employee:

- (1) was acting in the performance of the duties of the position; and
- (2) was not guilty of malfeasance in office, willful neglect of duty, or bad faith.

Notwithstanding any provisions to the contrary in section 127.03, subdivision 2 or 466.12, this section applies to all school districts, however organized.

Subd. 1a. [Repealed, 1987 c 79 s 3]

Subd. 2. [Repealed, 1987 c 79 s 3]

Subd. 3. **Effect on other laws.** This section does not repeal or modify Minnesota Statutes 1961, Sections 471.44, 471.45 and 471.86.

Subd. 4. [Repealed, 1987 c 79 s 3]

**History:** 1963 c 798 s 7; 1979 c 205 s 1; 1986 c 444; 1986 c 455 s 76; 1987 c 79 s 2; 1987 c 346 s 3

#### **466.08 COMPROMISE OF CLAIMS.**

Notwithstanding sections 466.03 and 466.06, the governing body of any municipality, the administrator of a self-insurance pool, or the authorized representative of a private insurance carrier may compromise, adjust and settle tort claims against the municipality for damages under section 466.02 and may, subject to procedural requirements imposed by law or charter, appropriate money for the payment of amounts agreed upon. When the amount of a settlement exceeds \$10,000, the settlement shall not be effective until approved by the district court.

**History:** 1963 c 798 s 8; 1987 c 260 s 2; 1990 c 555 s 12

#### **466.09 PAYMENT OF JUDGMENTS.**

When a judgment is entered against or a settlement is made by a municipality for a claim within the scope of section 466.02, payment shall be made and the same remedies shall apply in case of nonpayment as in the case of other judgments or settlements against the municipality. If the municipality has the authority to levy taxes and the judgment or settlement is unpaid at the time of the annual tax levy, the governing body shall, if it finds that other funds are not available for payment of the judgment, levy a tax sufficient to pay the judgment or settlement and interest accruing thereon to the expected time of payment. Such tax may be levied in excess of any per capita or local tax rate tax limitation imposed by statute or charter.

**History:** 1963 c 798 s 9; 1988 c 719 art 5 s 84; 1Sp1989 c 1 art 2 s 11

#### **466.10 PRIOR CLAIMS.**

Laws 1963, chapter 798, does not apply to any claim against any municipality arising before the effective date of Laws 1963, chapter 798. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if Laws 1963, chapter 798, had not been adopted.

**History:** 1963 c 798 s 10

**466.101 LAW ENFORCEMENT COSTS.**

When costs are assessed against a municipality for injuries incurred or other medical expenses connected with the arrest of individuals violating Minnesota Statutes, the municipality responsible for the hiring, firing, training, and control of the law enforcement and other employees involved in the arrest is responsible for those costs.

*History: 1986 c 455 s 77*

**466.11 RELATION TO CHARTERS AND SPECIAL LAWS.**

Sections 466.01 to 466.15 are exclusive of and supersede all home rule charter provisions and special laws on the same subject heretofore and hereafter adopted.

*History: 1963 c 798 s 11*

**466.12 SCHOOL DISTRICTS AND CERTAIN TOWNS.**

Subdivision 1. Sections 466.01 to 466.11, except as otherwise provided for in this section, do not apply to any school district, however organized, or to a town not exercising the powers of a statutory city under the provisions of Minnesota Statutes 1961, section 368.01, as amended.

Subd. 2. The doctrine of "governmental immunity from tort liability" as a rule of the decisions of the courts of this state is hereby enacted as a rule of statutory law applicable to all school districts and towns not exercising powers of statutory cities in the same manner and to the same extent as it was applied in this state to school districts and such towns on and prior to December 13, 1962.

As used in this subdivision the doctrine of "governmental immunity from tort liability" means the doctrine as part of the common law of England as adopted by the courts of this state as a rule of law exempting from tort liability school districts and towns not exercising the powers of statutory cities regardless of whether they are engaged in either governmental or proprietary activities, subject however, to such modifications thereof made by statutory enactments heretofore enacted, and subject to the other provisions of this section.

Subd. 3. A town not exercising the powers of a statutory city may procure insurance as provided for in section 466.06, and if a town not exercising the powers of a statutory city procures such insurance it shall otherwise be subject to all the terms and provisions of sections 466.02 to 466.09 to the extent of the liability coverage afforded. Cancellation or expiration of any liability policy shall restore immunity as herein provided as of the date of such cancellation or expiration.

Subd. 3a. A school district shall procure insurance as provided in section 466.06, meeting the requirements of section 466.04, if it is able to obtain insurance and the cost thereof does not exceed \$1.50 per pupil per year for the average number of pupils. If, after a good faith attempt to procure such insurance, a school district is unable to do so, and the commissioner of insurance certifies that such insurance is unobtainable, it shall be subject to the provisions of subdivisions 1 and 2. If the school district fails to make a good faith attempt to procure such insurance and the commissioner of insurance does not certify that such insurance is unobtainable, then in that event section 466.12 shall not apply to such a school district and it shall be subject to all of the other applicable provisions of chapter 466.

Subd. 4. This section is in effect on January 1, 1964, but all of its provisions shall expire on July 1, 1974, except that as to towns not exercising municipal powers pursuant to section 368.01, the provisions of this section shall expire on July 1, 1975. Prior to that date, the affected towns may take action individually, or jointly, or collectively through the Minnesota Association of Township Officers, to procure insurance against the liability imposed by this chapter to the extent of the limits of section 466.04.

The town board of an affected town may call a special town meeting at any time prior to October 1, 1974, for the purpose of voting a tax to pay the cost of procuring the insurance required by this section. The special meeting may be called by filing with the town clerk a written statement setting forth the reasons and necessity for the meet-

ing. The provisions of law applicable to the conduct of special town meetings generally shall apply to a special town meeting held pursuant to the authority granted in this section.

**History:** 1963 c 798 s 12; 1965 c 748 s 1; 1969 c 826 s 1-3; 1973 c 123 art 5 s 7; 1974 c 472 s 1

**466.13** [Expired]

**466.131 INDEMNIFICATION BY STATE.**

Until July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provisions of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules promulgated under it to inspect or investigate a provider. After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provisions of section 3.736, subdivision 9, when the municipality is required by sections 245A.01 to 245A.16, the human services licensing act, and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services.

**History:** 1986 c 395 s 15; 1992 c 464 art 1 s 45

**466.132 INDEMNIFICATION BY STATE.**

Municipalities, when performing, as required or mandated by state law, inspections or investigations of persons prior to the issuance of state licenses, are employees of the state for purposes of the indemnification provisions of section 3.736, subdivision 9. A municipality is not, however, an employee of the state for purposes of this section if in hiring, supervising, or continuing to employ the person performing an inspection or investigation for the municipality, the municipality was clearly negligent. In no event shall the state be obligated to defend or indemnify a municipality for inspections or investigations relating to licensing to the extent of insurance purchased by the municipality covering liability therefor. The municipality's right to indemnity shall not be considered a waiver of the limitations, defenses, and immunities available to the municipality and state by law.

**History:** 1986 c 455 s 90; 1988 c 411 s 8

**466.14** [Expired]

**466.15 CIVIL DAMAGES ACT, APPLICATION.**

Sections 466.01 to 466.15 do not modify section 340A.801.

**History:** 1963 c 798 s 15; 1985 c 305 art 12 s 5; 1Sp1985 c 16 art 2 s 26;