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AN ACT relating to state governmental operations; revising provisions governing application of the legislative continuance statute in certain judicial or administrative proceedings; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, the common-law rules developed in England are generally the rules of decision that govern in all the courts of this State unless: (1) those common-law rules conflict with any federal or state constitutional provisions; or (2) the Legislature changes or abolishes those common-law rules by statute. (NRS 1.030; *Cunningham v. Washoe Cnty.*, 66 Nev. 60, 64 (1949) (“Nevada has by statute adopted the principles of the common law and has in a number of instances modified the common law by statutory enactment.”)) Under the common-law rules, if a lawyer representing a party in judicial proceedings was also a state legislator, the court was not bound to recognize the lawyer-legislator’s required attendance at a legislative session as a sufficient cause to grant a continuance of the judicial proceedings during the legislative session. (*Johnson v. Theodoron*, 155 N.E. 481, 483 (Ill. 1927) (“At common law attendance on the sessions of a legislative body was not a cause for a continuance which a court was bound to recognize.”)) However, in exercising its judicial discretion in a particular case, the court was not precluded from granting a continuance to accommodate the lawyer-legislator’s required attendance at the legislative session.

Starting in the late 1800s, state legislatures began enacting legislative continuance statutes with the intent to abrogate the common-law rules and statutorily establish that a lawyer-legislator’s attendance at a legislative session is a “sufficient cause” for a continuance which the court is bound to recognize. (*St. Louis & Se. Ry. Co. v. Teters*, 68 Ill. 144, 146-47 (1873); *Hudgins v. Hall*, 32 S.E.2d 715, 718-19 (Va. 1945); *State ex rel. Snip v. Thatch*, 195 S.W.2d 106, 107-08 (Mo. 1946); J. J. Marticelli, Annotation, *Counsel’s Absence Because of Attendance on Legislature as Ground for Continuance*, 49 A.L.R.2d 1073 (1956 & Westlaw 2019)) Currently, at least 14 other states have legislative continuance statutes as part of their existing law. However, the language in these statutes varies considerably among the states. (Cal. Civ. Proc. Code § 595; Fla. Stat. Ann. § 11.111; Ga. Code Ann. § 9-10-150; La. Stat. Ann. § 13:4163; Minn. Stat. Ann. § 3.16; Miss. Code. Ann. § 11-1-9; Mo. Ann. Stat. § 510.120; N.Y. Jud. Law § 469; 12 Okl. St. Ann. § 667; S.C. Code Ann. § 2-1-150; Tenn. Code Ann. § 20-7-106; Tex. Civ. Prac. & Rem. Code Ann. § 30.003; W.Va. Code Ann. § 4-1-17; Wis. Stat. Ann. § 757.13)

In some states, courts have subjected legislative continuance statutes to heightened scrutiny to ensure that the statutes do not violate: (1) the separation-of-powers doctrine by invading the province of the judiciary to facilitate the prompt administration of justice, prevent irreparable harm and discourage unreasonable delays; and (2) the right to due process of law by denying litigants timely access to the courts when a substantial existing right or interest will be defeated or abridged by the continuance.

For example, in some states, courts have struck down legislative continuance statutes as facially unconstitutional when the statutory language is not capable of a constitutional interpretation because the language requires mandatory continuances



in all cases and fails to provide the objecting party, in certain exceptional cases, with a reasonable opportunity to prove that as a direct result of emergency or extraordinary circumstances, a substantial existing right or interest will be defeated or abridged by the requested continuance and the party will thereby suffer substantial and immediate irreparable harm. (*McConnell v. State*, 302 S.W.2d 805, 807-09 (Ark. 1957); *Booze v. Dist. Ct. of Lincoln Cnty.*, 365 P.2d 589, 591 (Okla. Crim. App. 1961); *Granai v. Witters, Longmoore, Akley & Brown*, 194 A.2d 391, 392-93 (Vt. 1963); *Lemoine v. Martineau*, 342 A.2d 616, 620-22 (R.I. 1975); *City of Valdez v. Valdez Dev. Co.*, 506 P.2d 1279, 1282-84 (Alaska 1973))

By contrast, in other states, courts have upheld legislative continuance statutes as facially constitutional when the statutory language is capable of a constitutional interpretation because, even though the language requires mandatory continuances in most cases, the language is nevertheless interpreted to provide the objecting party, in certain exceptional cases, with a reasonable opportunity to prove that as a direct result of emergency or extraordinary circumstances, a substantial existing right or interest will be defeated or abridged by the requested continuance and the party will thereby suffer substantial and immediate irreparable harm. (*Johnson v. Theodoron*, 155 N.E. 481, 483 (Ill. 1927); *Kyger v. Koerper*, 207 S.W.2d 46, 48-49 (Mo. 1946) (Hyde, J., concurring opinion joined by majority of court); *Nabholz Const. Corp. v. Patterson*, 317 S.W.2d 9, 11-12 (Ark. 1958); *Thurmond v. Super. Ct. of City & Cnty. of San Fran.*, 427 P.2d 985, 986-88 (Cal. 1967); *A.B.C. Bus. Forms, Inc. v. Spaet*, 201 So. 2d 890, 891-92 (Fla. 1967); *Waites v. Sondock*, 561 S.W.2d 772, 774 (Tex. 1977); *Williams v. Bordon's, Inc.*, 262 S.E.2d 881, 883-84 (S.C. 1980); *Strickland v. State*, 477 So. 2d 1347, 1348 (Miss. 1985); *State v. Chvala*, 673 N.W.2d 401, 404-08 (Wis. Ct. App. 2003); *Verio Healthcare, Inc. v. Super. Ct. of Orange Cnty.*, 208 Cal. Rptr. 3d 436, 443-48 (Cal. Ct. App. 2016))

In Nevada, existing law includes a legislative continuance statute. (NRS 1.310) Under the existing statute, if a party to any judicial or administrative action or proceeding is a member of the Legislature or President of the Senate, that fact is sufficient cause for the adjournment or continuance of the action or proceeding for the duration of any legislative session. The existing statute also provides that if an attorney for a party to any judicial or administrative action or proceeding was actually employed before the commencement of any legislative session and is a member of the Legislature or President of the Senate, that fact is sufficient cause for the adjournment or continuance of the action or proceeding for the duration of any legislative session. Finally, the existing statute provides that the adjournment or continuance must be granted without the imposition of terms.

In 2017, a state district court in Clark County found that Nevada's existing legislative continuance statute is "unconstitutional as written as it violates the separation of powers doctrine of the Nevada Constitution by allowing the legislature to commandeer the inherent power of the judiciary to govern its own procedures, removing all discretion from the Court." (*Degraw v. Eighth Jud. Dist. Ct.*, 134 Nev. Adv. Op. 43, 419 P.3d 136, 138 (2018)) The district court also stated that "[t]here are instances in which the postponement of an action would result in irreparable harm or defeat an existing right, and emergency relief is warranted. In those instances, the Court must be able to be allowed to exercise discretion." (*Degraw*, 419 P.3d at 138) Following the district court's decision, a writ petition was filed with the Nevada Supreme Court seeking review of the district court's decision. However, while the writ petition was pending, the parties resolved their case in the district court. As a result, the Nevada Supreme Court concluded that review of the district court's decision was not warranted because the writ petition had been rendered moot. Therefore, the Nevada Supreme Court did not reach the



merits of whether Nevada's existing legislative continuance statute is unconstitutional as written. (*Degraw*, 419 P.3d at 137-140)

Section 1 of this bill revises Nevada's existing legislative continuance statute to provide that, except for certain emergency or extraordinary circumstances, a court or administrative body is required to grant a requested continuance to a member of the Legislature or the President of the Senate when he or she is: (1) a party to any judicial or administrative action or proceeding during the legislative session; or (2) an attorney for such a party, so long as he or she was actually employed as the party's attorney before the legislative session. **Section 1** also provides that the continuance is effective for the duration of the legislative session and for an additional 7 calendar days following the session, unless a shorter period is requested by the person asking for the continuance. **Section 1** further provides that the continuance must be granted without the imposition of any bond, costs or other terms. Finally, **section 1** provides that if any party objects to the requested continuance, the court or administrative body cannot deny the requested continuance, in whole or in part, unless the objecting party satisfies the burden to prove that, as a direct result of emergency or extraordinary circumstances, the objecting party: (1) has a substantial existing right or interest that will be defeated or abridged if the requested continuance is granted; and (2) will suffer substantial and immediate irreparable harm if the requested continuance is granted.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~formitted-material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 1.310 is hereby amended to read as follows:

1.310 1. ~~[-a]~~ *Except as otherwise provided in subsection 3, if a person:*

(a) Is a member of the Legislature or the President of the Senate;

(b) During any regular or special session of the Legislature, is:

(1) A party to any action or proceeding in any court or before any administrative body ~~[is a member of the Legislature of the State of Nevada, or is President of the Senate, that fact is sufficient cause for the adjournment or continuance of the action or proceeding, including, without limitation, any discovery or other pretrial or posttrial matter involved in the action or proceeding, for the duration of any legislative session.~~

~~— 2. ~~[-an]~~ ; or~~

*(2) An attorney for a party to any action or proceeding in any court or before any administrative body ~~[-]~~ who was actually employed *as the party's attorney* before the commencement of ~~[any legislative] the session [-, is a member of the Legislature of the State of Nevada, or is President of the Senate, that fact is sufficient cause for the adjournment or]~~ ; *and**



(c) Files with the court or administrative body a motion or request for a continuance of the action or proceeding pursuant to this section,

↳ the court or administrative body shall grant the continuance of the action or proceeding, including, without limitation, any discovery or other pretrial or posttrial matter involved in the action or proceeding, subject to the provisions of subsection 2.

2. A continuance granted pursuant to subsection 1 must be:

(a) Effective for ~~the~~:

(1) The duration of ~~any legislative session.~~

~~*— 3. The adjournment or continuance provided for in subsections 1 and 2 must be granted the session and for an additional 7 calendar days following the session; or*~~

(2) A shorter period if requested by the person who filed the motion or request for a continuance of the action or proceeding.

(b) Granted without the imposition of any bond, costs or other terms.

3. If any party objects to a motion or request for a continuance that is filed pursuant to subsection 1, the court or administrative body shall not deny the requested continuance, in whole or in part, unless the objecting party satisfies the burden to prove that, as a direct result of emergency or extraordinary circumstances, the objecting party:

(a) Has a substantial existing right or interest that will be defeated or abridged if the requested continuance is granted; and

(b) Will suffer substantial and immediate irreparable harm if the requested continuance is granted.

Sec. 2. The amendatory provisions of this act apply to any judicial or administrative proceedings:

1. Commenced on or after the effective date of this act; or

2. Commenced before the effective date of this act if the proceedings are pending or otherwise unresolved on the effective date of this act.

Sec. 3. This act becomes effective upon passage and approval.

