
SENATE BILL NO. 57—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to legal representation of certain persons by the Attorney General or the chief legal officer of a political subdivision of this State in certain civil actions. (BDR 3-389)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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

AN ACT relating to legal representation; clarifying the authority of the Attorney General to provide for the legal defense of state judicial officers in civil actions relating to their public duties or employment under certain circumstances; clarifying the authority of the chief legal officer of a political subdivision of this State to provide for the legal defense of local judicial officers in civil actions relating to their public duties or employment under certain circumstances; requiring the Attorney General or the chief legal officer to provide for the legal defense of certain persons who are not officers or employees of the State or a political subdivision of this State in a civil action relating to the public duties or employment of certain officers or employees of this State or a political subdivision; clarifying that certain statutory provisions relating to legal representation of certain persons in certain civil actions do not abrogate, alter or affect the immunity of such persons under other law; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

1 Under existing law, the Attorney General provides legal counsel to any present
2 or former officer or employee of the State, any immune contractor or any State
3 legislator in a civil action brought against that person based on any alleged act or
4 omission relating to the person's public duty or employment if: (1) the person
5 submits a written request for such legal counsel; and (2) the Attorney General
6 determines that it appears that the person was acting within the course and scope of
7 his or her public duty or employment and in good faith. In addition, under existing
8 law, the chief legal officer or other authorized legal representative of a political
9 subdivision of this State provides legal counsel to any present or former officer or
10 employee of that political subdivision or a present or former member of a local
11 board or commission if: (1) the person submits a written request for such legal
12 counsel; and (2) the chief legal officer or authorized legal representative determines
13 that it appears that the person was acting within the course and scope of his or her
14 public duty or employment and in good faith. (NRS 41.0339)

15 **Sections 2-4 and 6-11** of this bill clarify existing law by specifically requiring:
16 (1) the Attorney General to provide legal counsel under these circumstances to any
17 present or former justice of the Supreme Court, senior justice, judge of a district
18 court or senior judge; and (2) the chief legal officer or other authorized legal
19 representative of a political subdivision of this State to provide legal counsel under
20 these circumstances to any present or former justice of the peace, senior justice of
21 the peace, municipal judge or senior municipal judge of that political subdivision.
22 In addition, **sections 2-4 and 6-11** of this bill require the Attorney General or the
23 chief legal officer or other authorized legal representative of a political subdivision
24 of this State to provide counsel for certain persons who are not employees or
25 officers of the State or political subdivision but who are named as defendants in a
26 civil action solely because of an alleged act or omission relating to the public duties
27 or employment of certain officers or employees of the State or political subdivision.

28 **Section 5** of this bill clarifies that the statutory provisions relating to legal
29 representation in civil actions relating to the public duties or employment of such
30 persons do not abrogate, alter or affect the immunity of such persons under other
31 law.

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

1 **Section 1.** Chapter 41 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this
3 act.

4 **Sec. 2.** *As used in NRS 41.0338 to 41.0347, inclusive, and*
5 *sections 2 to 5, inclusive, of this act, unless the context otherwise*
6 *requires, the words and terms defined in NRS 41.0338 and*
7 *sections 3 and 4 of this act have the meanings ascribed to them in*
8 *those sections.*

9 **Sec. 3.** *“Local judicial officer” means a justice of the peace,*
10 *senior justice of the peace, municipal judge or senior municipal*
11 *judge.*

12 **Sec. 4.** *“State judicial officer” means a justice of the*
13 *Supreme Court, senior justice, judge of a district court or senior*
14 *judge.*



1 **Sec. 5.** *The provisions of NRS 41.0338 to 41.0347, inclusive,*
2 *and sections 2 to 5, inclusive, of this act do not abrogate or*
3 *otherwise alter or affect any immunity from, or protection against,*
4 *any civil action or civil liability which is provided by law to a local*
5 *judicial officer, state judicial officer, officer or employee of this*
6 *State or a political subdivision of this State, immune contractor,*
7 *State Legislator, member of a state board or commission or*
8 *member of a local board or commission for any act or omission*
9 *relating to the person's public duties or employment.*

10 **Sec. 6.** NRS 41.0337 is hereby amended to read as follows:

11 41.0337 1. No tort action arising out of an act or omission
12 within the scope of a person's public duties or employment may be
13 brought against any present or former:

14 ~~1-1~~ (a) *Local judicial officer or state judicial officer;*

15 (b) *Officer or employee of the State or of any political*
16 *subdivision;*

17 ~~2-1~~ (c) *Immune contractor; or*

18 ~~3-1~~ (d) *State Legislator,*

19 ↪ *unless the State or appropriate political subdivision is named a*
20 *party defendant under NRS 41.031.*

21 2. *No tort action may be brought against a person who is*
22 *named as a defendant in the action solely because of an alleged*
23 *act or omission relating to the public duties or employment of any*
24 *present or former:*

25 (a) *Local judicial officer or state judicial officer;*

26 (b) *Officer or employee of the State or of any political*
27 *subdivision;*

28 (c) *Immune contractor; or*

29 (d) *State Legislator,*

30 ↪ *unless the State or appropriate political subdivision is named a*
31 *party defendant under NRS 41.031.*

32 **Sec. 7.** NRS 41.0338 is hereby amended to read as follows:

33 41.0338 ~~As used in NRS 41.0338 to 41.0347, inclusive, unless~~
34 ~~the context otherwise requires, "official"~~ *"Official attorney"* means:

35 1. The Attorney General, in an action which involves ~~1-1~~:

36 (a) *A present or former state judicial officer, State Legislator,*
37 *officer or employee of this State, immune contractor or member of a*
38 *state board or commission ~~1-1~~; or*

39 (b) *A person who is named as a defendant in the action solely*
40 *because of an alleged act or omission relating to the public duties*
41 *or employment of a person listed in paragraph (a).*

42 2. The chief legal officer or other authorized legal
43 representative of a political subdivision, in an action which involves

44 ~~1-1~~:



1 (a) A present or former *local judicial officer of that political*
2 *subdivision, a present or former* officer or employee of that
3 political subdivision or a present or former member of a local board
4 or commission ~~†~~; or

5 (b) *A person who is named as a defendant in the action solely*
6 *because of an alleged act or omission relating to the public duties*
7 *or employment of a person listed in paragraph (a).*

8 **Sec. 8.** NRS 41.0339 is hereby amended to read as follows:

9 41.0339 The official attorney shall provide for the defense,
10 including the defense of cross-claims and counterclaims, of any
11 present or former *local judicial officer, state judicial officer,* officer
12 or employee of the State or a political subdivision, immune
13 contractor or State Legislator in any civil action brought against that
14 person based on any alleged act or omission relating to the person's
15 public duties or employment, *or any other person who is named as*
16 *a defendant in a civil action solely because of an alleged act or*
17 *omission relating to the public duties or employment of a local*
18 *judicial officer, state judicial officer, officer or employee of the*
19 *State or a political subdivision, immune contractor or State*
20 *Legislator, if:*

21 1. Within 15 days after service of a copy of the summons and
22 complaint or other legal document commencing the action, the
23 person submits a written request for defense:

24 (a) To the official attorney; or

25 (b) If the officer, employee or immune contractor has an
26 administrative superior, to the administrator of the person's agency
27 and the official attorney; and

28 2. The official attorney has determined that the act or omission
29 on which the action is based appears to be within the course and
30 scope of public duty or employment and appears to have been
31 performed or omitted in good faith.

32 **Sec. 9.** NRS 41.0341 is hereby amended to read as follows:

33 41.0341 If the complaint is filed in a court of this state:

34 1. The *local judicial officer, state judicial officer,* officer,
35 employee, board or commission member, ~~†~~ State Legislator ~~†~~ *or*
36 *other person for whom the official attorney is required to provide*
37 *a defense pursuant to NRS 41.0339; and*

38 2. The state or any political subdivision named as a party
39 defendant,

40 ➔ each has 45 days after their respective dates of service to file an
41 answer or other responsive pleading.

42 **Sec. 10.** NRS 41.0346 is hereby amended to read as follows:

43 41.0346 1. At any time after the official attorney has
44 appeared in any civil action and commenced to defend any person
45 sued as a *local judicial officer, state judicial officer,* public officer,



1 employee, immune contractor, member of a board or commission,
2 ~~of~~ State Legislator ~~or~~ *or any other person defended by the official*
3 *attorney pursuant to NRS 41.0339*, the official attorney may apply
4 to any court to withdraw as the attorney of record for that person
5 based upon:

6 (a) Discovery of any new material fact which was not known at
7 the time the defense was tendered and which would have altered the
8 decision to tender the defense;

9 (b) Misrepresentation of any material fact by the person
10 requesting the defense, if that fact would have altered the decision to
11 tender the defense if the misrepresentation had not occurred;

12 (c) Discovery of any mistake of fact which was material to the
13 decision to tender the defense and which would have altered the
14 decision but for the mistake;

15 (d) Discovery of any fact which indicates that the act or
16 omission on which the civil action is based was not within the
17 course and scope of public duty or employment or was wanton or
18 malicious;

19 (e) Failure of the defendant to cooperate in good faith with the
20 defense of the case; or

21 (f) If the action has been brought in a court of competent
22 jurisdiction of this state, failure to name the State or political
23 subdivision as a party defendant, if there is sufficient evidence to
24 establish that the civil action is clearly not based on any act or
25 omission relating to the ~~defendant's~~ public ~~duty~~ *duties* or
26 employment ~~or~~ *of a local judicial officer, state judicial officer,*
27 *public officer, employee, immune contractor, member of a board*
28 *or commission or State Legislator.*

29 2. If any court grants a motion to withdraw on any of the
30 grounds set forth in subsection 1 brought by the official attorney, the
31 State or political subdivision has no duty to continue to defend any
32 person who is the subject of the motion to withdraw.

33 **Sec. 11.** NRS 41.0347 is hereby amended to read as follows:

34 41.0347 **1.** If the official attorney does not provide for the
35 defense of a present or former *local judicial officer, state judicial*
36 *officer*, officer, employee, immune contractor, member of a board or
37 commission of the State or any political subdivision or ~~of a~~ State
38 Legislator in any civil action in which the State or political
39 subdivision is also a named defendant, or which was brought in a
40 court other than a court of competent jurisdiction of this state, and if
41 it is judicially determined that the injuries arose out of an act or
42 omission of that person during the performance of any duty within
43 the course and scope of the person's public duty or employment and
44 that the person's act or omission was not wanton or malicious:



1 ~~H-1~~ (a) If the Attorney General was responsible for providing
2 the defense, the State is liable to that person for reasonable expenses
3 in prosecuting the person's own defense, including court costs and
4 attorney's fees. These expenses must be paid, upon approval by the
5 State Board of Examiners, from the Reserve for Statutory
6 Contingency Account.

7 ~~I-2~~ (b) If the chief legal officer or attorney of a political
8 subdivision was responsible for providing the defense, the political
9 subdivision is liable to that person for reasonable expenses in
10 carrying on the person's own defense, including court costs and
11 attorney's fees.

12 *2. If the official attorney does not provide for the defense of a*
13 *person who is named as a defendant in any civil action solely*
14 *because of an alleged act or omission relating to the public duties*
15 *or employment of a present or former local judicial officer, state*
16 *judicial officer, officer or employee of the State or a political*
17 *subdivision of this State, immune contractor or State Legislator*
18 *and the State or political subdivision is also a named defendant, or*
19 *the civil action was brought in a court other than a court of*
20 *competent jurisdiction of this State, and if it is judicially*
21 *determined that the injuries arose out of an act or omission of a*
22 *local judicial officer, state judicial officer, officer or employee of*
23 *the State or a political subdivision of this State, immune*
24 *contractor or State Legislator during the performance of any duty*
25 *within the course and scope of such a person's public duty or*
26 *employment and that the person's act or omission was not wanton*
27 *or malicious:*

28 (a) *If the Attorney General was responsible for providing the*
29 *defense, the State is liable to the person for reasonable expenses in*
30 *prosecuting the person's own defense, including court costs and*
31 *attorney's fees. These expenses must be paid, upon approval by the*
32 *State Board of Examiners, from the Reserve for Statutory*
33 *Contingency Account.*

34 (b) *If the chief legal officer or attorney of a political*
35 *subdivision was responsible for providing the defense, the political*
36 *subdivision is liable to that person for reasonable expenses in*
37 *carrying on the person's own defense, including court costs and*
38 *attorney's fees.*

39 **Sec. 12.** This act becomes effective on July 1, 2013.



