

SENATE BILL NO. 27—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the 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 3-219)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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

AN ACT relating to legal representation; revising provisions governing the legal representation of certain persons by the Attorney General or the chief legal officer of a political subdivision in civil actions relating to certain public duties or employment; 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 of  
10 that political subdivision or a present or former member of a local board or  
11 commission if: (1) the person submits a written request for such legal counsel; and  
12 (2) the chief legal officer or authorized legal representative determines that it  
13 appears that the person was acting within the scope of his or her public duty or  
14 employment and in good faith. (NRS 41.0339)

15 **Sections 2-3 and 3.7-8** 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 2-3 and 3.7-8** require the Attorney General or the chief legal  
23 officer or other authorized legal representative of a political subdivision of this  
24 State to provide counsel for certain persons who are not employees or officers of  
25 the State or political subdivision but who are named as defendants in a civil action  
26 solely because of an alleged act or omission relating to the public duties or  
27 employment of certain officers or employees of the State or political subdivision.

28 **Section 3.3** 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.

32 **Section 8.5** of this bill provides that for the 78th Session of the Nevada  
33 Legislature, the Director of the Department of Administration must include the  
34 biennial cost of implementing this bill in the Attorney General's cost allocation  
35 plan.

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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 3.3, inclusive, of this  
3 act.

4 **Sec. 2.** *As used in NRS 41.0338 to 41.0347, inclusive, and*  
5 *sections 2 to 3.3, inclusive, of this act, unless the context otherwise*  
6 *requires, the words and terms defined in NRS 41.0338 and*  
7 *sections 2.5 and 3 of this act have the meanings ascribed to them*  
8 *in those sections.*

9 **Sec. 2.5.** *“Local judicial officer” means a justice of the*  
10 *peace, senior justice of the peace, municipal judge or senior*  
11 *municipal judge.*

12 **Sec. 3.** *“State judicial officer” means a justice of the*  
13 *Supreme Court, senior justice, judge of a district court or senior*  
14 *judge.*

15 **Sec. 3.3.** *The provisions of NRS 41.0338 to 41.0347,*  
16 *inclusive, and sections 2 to 3.3, inclusive, of this act do not*  
17 *abrogate or otherwise alter or affect any immunity from, or*  
18 *protection against, any civil action or civil liability which is*  
19 *provided by law to a local judicial officer, state judicial officer,*  
20 *officer or employee of this State or a political subdivision of this*  
21 *State, immune contractor, State Legislator, member of a state*  
22 *board or commission or member of a local board or commission*  
23 *for any act or omission relating to the person's public duties or*  
24 *employment.*



1 **Sec. 3.7.** NRS 41.0337 is hereby amended to read as follows:

2 41.0337 **1.** No tort action arising out of an act or omission  
3 within the scope of a person's public duties or employment may be  
4 brought against any present or former:

5 ~~1-1~~ **(a) Local judicial officer or state judicial officer;**

6 **(b) Officer or employee of the State or of any political**  
7 **subdivision;**

8 ~~1-2~~ **(c) Immune contractor; or**

9 ~~1-3~~ **(d) State Legislator,**

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

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

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

17 ***(b) Officer or employee of the State or of any political***  
18 ***subdivision;***

19 ***(c) Immune contractor; or***

20 ***(d) State Legislator,***

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

23 **3. As used in this section:**

24 ***(a) "Local judicial officer" has the meaning ascribed to it in***  
25 ***section 2.5 of this act.***

26 ***(b) "State judicial officer" has the meaning ascribed to it in***  
27 ***section 3 of this act.***

28 **Sec. 4.** NRS 41.0338 is hereby amended to read as follows:

29 41.0338 ~~As used in NRS 41.0338 to 41.0347, inclusive, unless~~  
30 ~~the context otherwise requires, "official~~ **"Official** attorney" means:

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

32 ***(a) A present or former state judicial officer, State Legislator,***  
33 ***officer or employee of this State, immune contractor or member of a***  
34 ***state board or commission 1-1 ; or***

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

38 2. The chief legal officer or other authorized legal  
39 representative of a political subdivision, in an action which involves  
40 ~~1-1~~ :

41 ***(a) A present or former local judicial officer of that political***  
42 ***subdivision, a present or former*** officer or employee of that  
43 political subdivision or a present or former member of a local board  
44 or commission ~~1-1~~ ; or



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

4 **Sec. 5.** NRS 41.0339 is hereby amended to read as follows:

5 41.0339 **1.** The official attorney shall provide for the defense,  
6 including the defense of cross-claims and counterclaims, of any  
7 present or former *local judicial officer, state judicial officer,* officer  
8 or employee of the State or a political subdivision, immune  
9 contractor or State Legislator in any civil action brought against that  
10 person based on any alleged act or omission relating to the person's  
11 public duties or employment, *or any other person who is named as*  
12 *a defendant in a civil action solely because of an alleged act or*  
13 *omission relating to the public duties or employment of a local*  
14 *judicial officer, state judicial officer, officer or employee of the*  
15 *State or a political subdivision, immune contractor or State*  
16 *Legislator, if:*

17 ~~1-1~~ **(a)** Within 15 days after service of a copy of the summons  
18 and complaint or other legal document commencing the action, the  
19 person submits a written request for defense:

20 ~~1(a)~~ **(1)** To the official attorney; or

21 ~~1(b)~~ **(2)** If the officer, employee or immune contractor has an  
22 administrative superior, to the administrator of the person's agency  
23 and the official attorney; and

24 ~~1-2~~ **(b)** The official attorney has determined that the act or  
25 omission on which the action is based appears to be within the  
26 course and scope of public duty or employment and appears to have  
27 been performed or omitted in good faith.

28 **2.** *If the official attorney determines that it is impracticable,*  
29 *uneconomical or could constitute a conflict of interest for the legal*  
30 *service to be rendered by the official attorney or a deputy of the*  
31 *official attorney, the official attorney must employ special counsel*  
32 *pursuant to NRS 41.03435 or 41.0344, whichever is applicable.*

33 **Sec. 6.** NRS 41.0341 is hereby amended to read as follows:

34 41.0341 If the complaint is filed in a court of this state:

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

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

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

43 **Sec. 7.** NRS 41.0346 is hereby amended to read as follows:

44 41.0346 1. At any time after the official attorney has  
45 appeared in any civil action and commenced to defend any person



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

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

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

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

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

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

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

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

34 **Sec. 8.** NRS 41.0347 is hereby amended to read as follows:

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



1 ~~11~~ (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 ~~12~~ (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 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 any political*  
17 *subdivision, immune contractor or State Legislator and the State*  
18 *or political subdivision is also named a defendant, or the civil*  
19 *action was brought in a court other than a court of competent*  
20 *jurisdiction of this State, and if it is judicially determined that the*  
21 *injuries arose out of an act or omission of a local judicial officer,*  
22 *state judicial officer, officer or employee of the State or any*  
23 *political subdivision, immune contractor or State Legislator*  
24 *during the performance of any duty within the course and scope of*  
25 *such a person's public duty or employment and that the person's*  
26 *act or omission was not wanton or malicious:*

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

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

38 **Sec. 8.5.** For the 78th Session of the Nevada Legislature, in  
39 accordance with the provisions of subsection 2 of NRS 228.113,  
40 the Director of the Department of Administration shall include the  
41 biennial cost of implementing the provisions of this act in the  
42 Attorney General's cost allocation plan.

43 **Sec. 9.** This act becomes effective on July 1, 2013.

