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BRIAN SANDOVAL
Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (775) 684-1100
Fax (775) 684-1108
ag.state.nv.us
E-Mail: aginfo@ag.state.nv.us

ANN WILKINSON
Assistant Attorney General

Testimony of Solicitor General Jeff E. Parker on AB 341

With its waiver of Eleventh Amendment immunity, AB 341 eliminates a legal defense otherwise available to the State of Nevada in federal actions and thus will allow plaintiffs to avoid the Nevada tort damages cap contained in NRS 41.035. Therefore, the bill will have a substantial effect on the resources, primarily financial, on the State of Nevada, its agencies, and the Office of the Attorney General. Currently, plaintiffs can seek relief in Nevada State courts, subject, of course, to the tort damages cap contained in NRS 41.035

Civil rights actions are the most expensive cases brought against the State. The average cost over the past five fiscal years to settle a civil rights claim against the State is \$40,964. A conservative estimate of the cost of taking a simple case to trial in federal court would exceed \$20,000 per case. It is likely the Office of the Attorney General would need to add at least two additional Deputy Attorneys General, as well as support staff, to handle the increase in caseload. It is also likely that in a case in which a State agency is named as well as an employee of the agency, the State would have to hire outside counsel to avoid a conflict at an estimated cost of \$40,000 per case.

Unfortunately, because of the federal court rules, the State is in a lose/lose situation.

Generally if the State loses a case in federal court, the State not only has to pay the

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SUBMITTED BY: JEFF PARKER

judgment but all the plaintiff's attorney fees and costs. If the State prevails in federal court, it is at the court's discretion to award the State its costs and the State is rarely awarded fees unless it can prove the case was frivolous. Therefore, the cost of taking a case to trial is rarely if ever recovered by the State.

A conservative estimate of the cost to the Tort Claims Fund alone would be \$1,500,000 per year or about a 30% to 50% increase. These costs would be reflected in increased premiums paid by all State agencies. The majority of these are General Fund agencies. It is conceivable that, given the expansion of possible causes of action to which the State would be exposed if this bill passes, the total liability of the State could more than double.

1. The types of examinations which an employer may require; and
2. Any defenses which are available to an employer, relating to the subject matter of those provisions.
(Added to NRS by 1991, 1982)

NRS 613.330 Unlawful employment practices: Discrimination or segregation on basis of race, sex, sexual orientation, age or disability; refusal to permit guide, hearing or helping dog or other service animal at place of employment.

1. Except as otherwise provided in NRS 613.350, it is an unlawful employment practice for an employer:
 - (a) To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to his compensation, terms, conditions or privileges of employment, because of his race, color, religion, sex, sexual orientation, age, disability or national origin; or
 - (b) To limit, segregate or classify an employee in a way which would deprive or tend to deprive him of employment opportunities or otherwise adversely affect his status as an employee, because of his race, color, religion, sex, sexual orientation, age, disability or national origin.
2. It is an unlawful employment practice for an employment agency to:
 - (a) Fail or refuse to refer for employment, or otherwise to discriminate against, any person because of the race, color, religion, sex, sexual orientation, age, disability or national origin of that person; or
 - (b) Classify or refer for employment any person on the basis of the race, color, religion, sex, sexual orientation, age, disability or national origin of that person.
3. It is an unlawful employment practice for a labor organization:
 - (a) To exclude or to expel from its membership, or otherwise to discriminate against, any person because of his race, color, religion, sex, sexual orientation, age, disability or national origin;
 - (b) To limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive him of employment opportunities, or would limit his employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of his race, color, religion, sex, sexual orientation, age, disability or national origin; or
 - (c) To cause or attempt to cause an employer to discriminate against any person in violation of this section.
4. It is an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including, without limitation, on-the-job training programs, to discriminate against any person because of his race, color, religion, sex, sexual orientation, age, disability or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.
5. It is an unlawful employment practice for any employer, employment agency, labor organization or joint labor-management committee to discriminate against a person with physical, aural or visual disabilities by interfering, directly or indirectly, with the use of an aid or appliance, including, without limitation, a guide dog, hearing dog, helping dog or other service animal, by such a person.
6. It is an unlawful employment practice for an employer, directly or indirectly, to refuse to permit an employee with a visual or aural disability to keep his guide dog, hearing dog or other service animal with him at all times in his place of employment.

NAC 284.581 Adoption by reference of federal law and regulations. (NRS 284.345)

1. For the purposes of NAC 284.523 to 284.598, inclusive, the department of personnel hereby adopts by reference:

(a) The Family and Medical Leave Act of 1993 (Public Law 103-3), as amended.

(b) The Fair Labor Standards Act of 1938, as amended, and 29 C.F.R. Part 541.

2. A copy of the Family and Medical Leave Act, the Fair Labor Standards Act or 29 C.F.R. Part 541 may be obtained at no charge from the United States Government, Wage and Hour Division, P.O. Box 3136, Reno, Nevada 89505-3136, telephone (775) 784-5200, or from the United States Government, Wage and Hour Division, 1050 Flamingo Road, Suite 321, Las Vegas, Nevada 89119, telephone (702) 699-5581.

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000)