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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](mailto: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

EXHIBIT J Senate Committee on Finance

Date: 5/20/03 Page 1 of 7

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)

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

*Date:* May 5, 2003  
*To:* Solicitor General Jeff Parker  
*From:* Stan Miller, Tort Claims Manager  
Litigation Division  
*Subject:* AB 341

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I have contacted all forty-nine states regarding whether they have waived Eleventh Amendment immunity. Of the forty-nine states, the only State to waive their Eleventh Amendment immunity for FMLA, FLSA, ADA and ADEA is North Carolina. North Dakota has waived by statute their immunity for the Fair Labor Standards Act only and it has been deemed by an Iowa Supreme Court decision that Iowa has waived their immunity for the same Act. Legislation similar to ours is currently pending in Maine, Kansas, Illinois, Nebraska and Maryland. A similar bill recently passed in Rhode Island, but it was vetoed by the governor. In addition, the fiscal note from the Attorney General's Office in Maine regarding its pending legislation is attached.

**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 415  
An Act To Restore Federal Protections to Maine State Employees**

**LR 1412(01)  
Fiscal Note for Original Bill  
Sponsor: Rep. Richardson  
Committee: Judiciary  
Fiscal Note Required: Yes**

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**Fiscal Note**

Undetermined current biennium cost increase - General Fund

**Fiscal Detail and Notes**

The fiscal impact of this legislation depends on the number of suits filed by certain employees. In a worst case scenario the potential cost could be up to \$1,000,000 per occurrence for an employee or former employee of the State of Maine who sues under specified federal employment laws. The additional costs to the Department of Attorney General for defending each claim can not be determined at this time.



**BDR 3-356**  
**A.B. 341**

**EXECUTIVE AGENCY  
FISCAL NOTE**

AGENCY'S ESTIMATES

Date Prepared: March 31, 2003

Agency Submitting: Office of the Attorney General

Items of Revenue or Expense, or Both	Fiscal Year 2002-03	Fiscal Year 2003-04	Fiscal Year 2004-05	Effect on Future Biennia
Personnel (Expense)		\$226,603	\$226,603	\$453,206
In State Travel (Expense)		\$1,218	\$1,218	\$2,436
Operating (Expense)		\$10,034	\$9,734	\$19,468
Equipment (Expense)		\$7,063		
Information Services (Expense)		\$10,465	\$360	\$720
Gen/Fleet Tort Claims (Expense)		\$1,500,000	\$1,500,000	\$3,000,000
Contracts (Expense)		\$160,000	\$160,000	\$320,000
<b>Total</b>		<b>\$1,915,383</b>	<b>\$1,897,915</b>	<b>\$3,795,830</b>

Explanation (Use Additional Sheets of Attachments, if required)

Required - 2 Deputy Attorney's General and 1 Legal Secretary II and related costs. These positions and their related expenses would be paid from the General Fund. In cases in which a State agency is named as well as an employee, outside counsel would be needed to avoid conflict. The cost of contracts for outside counsel would be paid from the Statutory Contingency Fund. The cost to the Tort Claim Fund would be reflected in increased premiums paid by all State agencies. The majority of these agencies are supported by General Funds.

Name Marietta Lopez

Title Chief Financial Officer

DEPARTMENT OF ADMINISTRATION'S COMMENT

Date April 02, 2003

Attorney General's Office estimate appears reasonable.

Name John P. Comeaux

Title Director