
ASSEMBLY BILL NO. 341—ASSEMBLYMEN OCEGUERA, ANDERSON,
PARKS, CONKLIN, GIBBONS, ATKINSON, CHOWNING,
GIUNCHIGLIANI, GOLDWATER, HORNE, LESLIE,
MCCLEARY, MORTENSON, PIERCE AND WILLIAMS

MARCH 17, 2003

Referred to Committee on Judiciary

SUMMARY—Effectuates specific and limited waiver of immunity
of State under Eleventh Amendment to the United
States Constitution with regard to certain federal
laws regulating employment practices. (BDR 3-356)

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

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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 civil actions; effectuating a specific and limited
waiver of the immunity of the State under the Eleventh
Amendment to the United States Constitution with regard
to certain federal laws regulating employment practices;
and providing other matters properly relating thereto.

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 a new section to read as follows:
3 1. *The State of Nevada hereby waives its immunity from suit*
4 *conferred by the Eleventh Amendment to the Constitution of the*
5 *United States and hereby consents to have its liability determined*
6 *in accordance with the same rules of law that are applied in civil*
7 *actions against natural persons and other entities, for the specific*
8 *and limited purpose of allowing a person who applies for*
9 *employment with the State or a person who is or was an officer or*
10 *employee of the State to bring against the State and its officers and*
11 *employees, in an appropriate federal court or court of this state, a*
12 *cause of action based on any of the following federal laws:*



* A B 3 4 1 *

- 1 (a) *The Fair Labor Standards Act of 1938, as amended, 29*
- 2 *U.S.C. §§ 201 et seq.*
- 3 (b) *The Age Discrimination in Employment Act of 1967, as*
- 4 *amended, 29 U.S.C. §§ 621 et seq.*
- 5 (c) *The Family and Medical Leave Act of 1993, as amended,*
- 6 *29 U.S.C. §§ 2601 et seq.*
- 7 (d) *Title VII of the Civil Rights Act of 1964, as amended, 42*
- 8 *U.S.C. §§ 2000e to 2000e-17, inclusive.*
- 9 (e) *Title I of the Americans with Disabilities Act of 1990, as*
- 10 *amended, 42 U.S.C. §§ 12111 to 12117, inclusive.*
- 11 2. *A person may not bring a cause of action against the State*
- 12 *and its officers and employees pursuant to a federal law expressly*
- 13 *set forth in this section, unless the person:*
- 14 (a) *Has an independent right under the federal law to bring*
- 15 *the cause of action; and*
- 16 (b) *Has complied with all applicable requirements under the*
- 17 *federal law to bring the cause of action.*
- 18 3. *If a person brings a cause of action against the State and*
- 19 *its officers and employees pursuant to a federal law expressly set*
- 20 *forth in this section and the cause of action is adjudicated in a*
- 21 *federal court, the State hereby waives its immunity from suit*
- 22 *conferred by the Eleventh Amendment to the Constitution of the*
- 23 *United States and hereby consents to have its liability determined*
- 24 *in accordance with the same rules of law that are applied in civil*
- 25 *actions against natural persons and other entities, for the specific*
- 26 *and limited purpose of allowing the person to bring against the*
- 27 *State and its officers and employees any claim under state law if:*
- 28 (a) *The federal court exercises its supplemental jurisdiction*
- 29 *over the claim under state law in accordance with 28 U.S.C. §*
- 30 *1367; and*
- 31 (b) *The claim under state law is adjudicated as if it were*
- 32 *brought pursuant to NRS 41.031.*
- 33 *Any claim under state law that is brought against the State and its*
- 34 *officers and employees pursuant to this subsection is subject to all*
- 35 *applicable conditions and limitations which are set forth in NRS*
- 36 *41.0305 to 41.039, inclusive, or any other statute, or which are*
- 37 *recognized by the common law of this state.*
- 38 4. *If a person brings a cause of action against the State and*
- 39 *its officers and employees pursuant to a federal law expressly set*
- 40 *forth in this section, the person is entitled only to those rights and*
- 41 *remedies provided by the federal law, and the provisions of this*
- 42 *section do not create any new rights or remedies or expand any*
- 43 *existing rights or remedies provided by the federal law.*
- 44 5. *The provisions of this section effectuate only a specific and*
- 45 *limited waiver of the State's immunity from suit conferred by the*



1 *Eleventh Amendment to the Constitution of the United States and*
2 *must not be construed to waive such immunity for any law, right,*
3 *remedy, claim or action that is not expressly set forth in this*
4 *section.*

5 *6. The provisions of this section do not apply to any cause of*
6 *action that first accrued before October 1, 2003, regardless of*
7 *whether the cause of action may be characterized as a continuing*
8 *cause of action based on acts occurring on or after October 1,*
9 *2003.*

10 **Sec. 2.** NRS 41.0307 is hereby amended to read as follows:

11 41.0307 As used in NRS 41.0305 to 41.039, inclusive ~~§~~, *and*
12 *section 1 of this act, unless the context otherwise requires:*

13 1. "Employee" includes an employee of a:

14 (a) Part-time or full-time board, commission or similar body of
15 the State or a political subdivision of the State which is created by
16 law.

17 (b) Charter school.

18 2. "Employment" includes any services performed by an
19 immune contractor.

20 3. "Immune contractor" means any natural person, professional
21 corporation or professional association which:

22 (a) Is an independent contractor with the State pursuant to NRS
23 284.173; and

24 (b) Contracts to provide medical services for the Department of
25 Corrections.

26 As used in this subsection, "professional corporation" and
27 "professional association" have the meanings ascribed to them in
28 NRS 89.020.

29 4. "Public officer" or "officer" includes:

30 (a) A member of a part-time or full-time board, commission or
31 similar body of the State or a political subdivision of the State which
32 is created by law.

33 (b) A public defender and any deputy or assistant attorney of a
34 public defender or an attorney appointed to defend a person for a
35 limited duration with limited jurisdiction.

36 (c) A district attorney and any deputy or assistant district
37 attorney or an attorney appointed to prosecute a person for a limited
38 duration with limited jurisdiction.

39 **Sec. 3.** NRS 41.031 is hereby amended to read as follows:

40 41.031 1. The State of Nevada hereby waives its immunity
41 from liability and action and hereby consents to have its liability
42 determined in accordance with the same rules of law ~~as~~ *that* are
43 applied ~~to~~ *in* civil actions against natural persons and
44 ~~corporations,~~ *other entities*, except as otherwise provided in NRS
45 ~~[41.032 to 41.038,]~~ *41.0305 to 41.039*, inclusive, *and section 1 of*



1 *this act, and NRS* 485.318, ~~subsection 3~~ and any statute which
2 expressly provides for governmental immunity, if the claimant
3 complies with the limitations of NRS 41.010 or the limitations of
4 NRS ~~41.032 to 41.036, inclusive.~~ *41.0305 to 41.039, inclusive,*
5 *and section 1 of this act.*

6 2. The State of Nevada further waives the immunity from
7 liability and action of all political subdivisions of the State, and their
8 liability must be determined in the same manner, except as
9 otherwise provided in NRS ~~41.032 to 41.038, inclusive, subsection~~
10 ~~3~~ *41.0305 to 41.039, inclusive, and section 1 of this act,* and any
11 statute which expressly provides for governmental immunity, if the
12 claimant complies with the limitations of NRS ~~41.032 to 41.036,~~
13 ~~inclusive.~~
14 ~~—2.~~ *41.0305 to 41.039, inclusive, and section 1 of this act.*

15 3. An action may be brought under this section against the
16 State of Nevada or any political subdivision of the State. In any
17 action against the State of Nevada, the action must be brought in the
18 name of the State of Nevada on relation of the particular
19 department, commission, board or other agency of the State whose
20 actions are the basis for the suit. An action against the State of
21 Nevada must be filed in the county where the cause or some part
22 thereof arose or in Carson City. In an action against the State of
23 Nevada, the summons and a copy of the complaint must be served
24 upon:

25 (a) The Attorney General, or a person designated by the
26 Attorney General, at the Office of the Attorney General in Carson
27 City; and

28 (b) The person serving in the office of administrative head of the
29 named agency.

30 ~~{3.—The}~~

31 4. *Except as otherwise provided in section 1 of this act, the*
32 *State of Nevada does not waive its immunity from suit conferred by*
33 *the Eleventh Amendment* ~~{XI of}~~ *to the Constitution of the United*
34 *States.*

35 **Sec. 4.** NRS 41.036 is hereby amended to read as follows:

36 41.036 1. Each person who has a claim against the State or
37 any of its agencies arising out of a tort must file his claim within 2
38 years after the time the cause of action accrues with the Attorney
39 General.

40 2. Each person who has a claim against any political
41 subdivision of the State arising out of a tort must file his claim
42 within 2 years after the time the cause of action accrues with the
43 governing body of that political subdivision.



1 3. The filing of a claim in tort against the State or a political
2 subdivision as required by subsections 1 and 2 is not a condition
3 precedent to bringing an action pursuant to NRS 41.031 ~~§~~
4 *or section 1 of this act.*

5 4. The Attorney General shall, if authorized by regulations
6 adopted by the State Board of Examiners pursuant to subsection 6,
7 approve, settle or deny each claim that is:

- 8 (a) Filed pursuant to subsection 1; and
- 9 (b) Not required to be passed upon by the Legislature.

10 5. If the Attorney General is not authorized to approve, settle
11 or deny a claim filed pursuant to subsection 1, the Attorney General
12 shall investigate the claim and submit a report of findings to the
13 State Board of Examiners concerning that claim.

14 6. The State Board of Examiners shall adopt regulations that
15 specify:

- 16 (a) The type of claim that the Attorney General is required to
17 approve, settle or deny pursuant to subsection 4; and
- 18 (b) The procedure to be used by the Attorney General to
19 approve, settle or deny that claim.

20 **Sec. 5.** NRS 41.0375 is hereby amended to read as follows:

21 41.0375 1. Any agreement to settle a claim or action brought
22 under NRS 41.031 *or section 1 of this act*, or against a present or
23 former officer or employee of the State or any political subdivision,
24 immune contractor or State Legislator:

- 25 (a) Must not provide that any or all of the terms of the
26 agreement are confidential.
- 27 (b) Must include the amount of any attorney's fees and costs to
28 be paid pursuant to the agreement.
- 29 (c) Is a public record and must be open for inspection pursuant
30 to NRS 239.010.

31 2. Any provision of an agreement to settle a claim or action
32 brought under NRS 41.031 *or section 1 of this act*, or against a
33 present or former officer or employee of the State or any political
34 subdivision, immune contractor or State Legislator that conflicts
35 with this section is void.

36 **Sec. 6.** NRS 41.038 is hereby amended to read as follows:

37 41.038 1. The State and any local government may:
38 (a) Insure itself against any liability arising under NRS 41.031
39 ~~§~~ *or section 1 of this act.*

40 (b) Insure any of its officers, employees or immune contractors
41 against tort liability resulting from an act or omission in the scope of
42 his employment.

43 (c) Insure against the expense of defending a claim against itself
44 or any of its officers, employees or immune contractors whether or
45 not liability exists on such a claim.



1 2. Any school district may insure any peace officer, requested
2 to attend any school function, against tort liability resulting from an
3 act or omission in the scope of his employment while attending such
4 a function.

5 3. As used in this section:

6 (a) "Insure" means to purchase a policy of insurance or establish
7 a self-insurance reserve or fund, or any combination thereof.

8 (b) "Local government" means every political subdivision and
9 every other governmental entity in this state.

10 **Sec. 7.** NRS 396.433 is hereby amended to read as follows:

11 396.433 1. The Board of Regents may budget for and
12 purchase fidelity insurance and insurance against:

13 (a) Any liability arising under NRS 41.031 ~~H~~ *or section 1 of*
14 *this act.*

15 (b) Tort liability on the part of any of its employees resulting
16 from an act or omission in the scope of his employment.

17 (c) The expense of defending a claim against itself whether or
18 not liability exists on such claim.

19 2. Such insurance shall be limited in amount according to the
20 limitation of liability imposed by NRS 41.035 and shall be
21 purchased from companies authorized to do business in the State of
22 Nevada.

23 3. Each contract of insurance shall be free of any condition of
24 contingent liability and shall contain a clause which provides that no
25 assessment may be levied against the insured over and above the
26 premium fixed by such contract.

