

SENATE BILL NO. 554—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COUNSEL)

MAY 31, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing application of the legislative continuance statute in certain judicial or administrative proceedings. (BDR 1-90)

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 state governmental operations; revising provisions governing application of the legislative continuance statute in certain judicial or administrative proceedings; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the common-law rules developed in England are generally
2 the rules of decision that govern in all the courts of this State unless: (1) those
3 common-law rules conflict with any federal or state constitutional provisions; or (2)
4 the Legislature changes or abolishes those common-law rules by statute. (NRS
5 1.030; *Cunningham v. Washoe Cnty.*, 66 Nev. 60, 64 (1949) (“Nevada has by
6 statute adopted the principles of the common law and has in a number of instances
7 modified the common law by statutory enactment.”)) Under the common-law rules,
8 if a lawyer representing a party in judicial proceedings was also a state legislator,
9 the court was not bound to recognize the lawyer-legislator’s required attendance at
10 a legislative session as a sufficient cause to grant a continuance of the judicial
11 proceedings during the legislative session. (*Johnson v. Theodoron*, 155 N.E. 481,
12 483 (Ill. 1927) (“At common law attendance on the sessions of a legislative body
13 was not a cause for a continuance which a court was bound to recognize.”))
14 However, in exercising its judicial discretion in a particular case, the court was not
15 precluded from granting a continuance to accommodate the lawyer-legislator’s
16 required attendance at the legislative session.

17 Starting in the late 1800s, state legislatures began enacting legislative
18 continuance statutes with the intent to abrogate the common-law rules and
19 statutorily establish that a lawyer-legislator’s attendance at a legislative session is a
20 “sufficient cause” for a continuance which the court is bound to recognize. (*St.*



21 *Louis & Se. Ry. Co. v. Teters*, 68 Ill. 144, 146-47 (1873); *Hudgins v. Hall*, 32
22 S.E.2d 715, 718-19 (Va. 1945); *State ex rel. Snip v. Thatch*, 195 S.W.2d 106, 107-
23 08 (Mo. 1946); J. J. Marticelli, Annotation, *Counsel's Absence Because of*
24 *Attendance on Legislature as Ground for Continuance*, 49 A.L.R.2d 1073 (1956 &
25 Westlaw 2019)) Currently, at least 14 other states have legislative continuance
26 statutes as part of their existing law. However, the language in these statutes varies
27 considerably among the states. (Cal. Civ. Proc. Code § 595; Fla. Stat. Ann. §
28 11.111; Ga. Code Ann. § 9-10-150; La. Stat. Ann. § 13:4163; Minn. Stat. Ann. §
29 3.16; Miss. Code. Ann. § 11-1-9; Mo. Ann. Stat. § 510.120; N.Y. Jud. Law § 469;
30 12 Okl. St. Ann. § 667; S.C. Code Ann. § 2-1-150; Tenn. Code Ann. § 20-7-106;
31 Tex. Civ. Prac. & Rem. Code Ann. § 30.003; W.Va. Code Ann. § 4-1-17; Wis. Stat.
32 Ann. § 757.13)

33 In some states, courts have subjected legislative continuance statutes to
34 heightened scrutiny to ensure that the statutes do not violate: (1) the separation-of-
35 powers doctrine by invading the province of the judiciary to facilitate the prompt
36 administration of justice, prevent irreparable harm and discourage unreasonable
37 delays; and (2) the right to due process of law by denying litigants timely access to
38 the courts when a substantial existing right or interest will be defeated or abridged
39 by the continuance.

40 For example, in some states, courts have struck down legislative continuance
41 statutes as facially unconstitutional when the statutory language is not capable of a
42 constitutional interpretation because the language requires mandatory continuances
43 in all cases and fails to provide the objecting party, in certain exceptional cases,
44 with a reasonable opportunity to prove that as a direct result of emergency or
45 extraordinary circumstances, a substantial existing right or interest will be defeated
46 or abridged by the requested continuance and the party will thereby suffer
47 substantial and immediate irreparable harm. (*McConnell v. State*, 302 S.W.2d 805,
48 807-09 (Ark. 1957); *Booze v. Dist. Ct. of Lincoln Cnty.*, 365 P.2d 589, 591 (Okla.
49 Crim. App. 1961); *Granai v. Witters, Longmoore, Akley & Brown*, 194 A.2d 391,
50 392-93 (Vt. 1963); *Lemoine v. Martineau*, 342 A.2d 616, 620-22 (R.I. 1975); *City*
51 *of Valdez v. Valdez Dev. Co.*, 506 P.2d 1279, 1282-84 (Alaska 1973))

52 By contrast, in other states, courts have upheld legislative continuance statutes
53 as facially constitutional when the statutory language is capable of a constitutional
54 interpretation because, even though the language requires mandatory continuances
55 in most cases, the language is nevertheless interpreted to provide the objecting
56 party, in certain exceptional cases, with a reasonable opportunity to prove that as a
57 direct result of emergency or extraordinary circumstances, a substantial existing
58 right or interest will be defeated or abridged by the requested continuance and the
59 party will thereby suffer substantial and immediate irreparable harm. (*Johnson v.*
60 *Theodoron*, 155 N.E. 481, 483 (Ill. 1927); *Kyger v. Koerper*, 207 S.W.2d 46, 48-49
61 (Mo. 1946) (Hyde, J., concurring opinion joined by majority of court); *Nabholz*
62 *Const. Corp. v. Patterson*, 317 S.W.2d 9, 11-12 (Ark. 1958); *Thurmond v. Super.*
63 *Ct. of City & Cnty. of San Fran.*, 427 P.2d 985, 986-88 (Cal. 1967); *A.B.C. Bus.*
64 *Forms, Inc. v. Spaet*, 201 So. 2d 890, 891-92 (Fla. 1967); *Waites v. Sondock*, 561
65 S.W.2d 772, 774 (Tex. 1977); *Williams v. Bordon's, Inc.*, 262 S.E.2d 881, 883-84
66 (S.C. 1980); *Strickland v. State*, 477 So. 2d 1347, 1348 (Miss. 1985); *State v.*
67 *Chvala*, 673 N.W.2d 401, 404-08 (Wis. Ct. App. 2003); *Verio Healthcare, Inc. v.*
68 *Super. Ct. of Orange Cnty.*, 208 Cal. Rptr. 3d 436, 443-48 (Cal. Ct. App. 2016))

69 In Nevada, existing law includes a legislative continuance statute. (NRS 1.310)
70 Under the existing statute, if a party to any judicial or administrative action or
71 proceeding is a member of the Legislature or President of the Senate, that fact is
72 sufficient cause for the adjournment or continuance of the action or proceeding for
73 the duration of any legislative session. The existing statute also provides that if an
74 attorney for a party to any judicial or administrative action or proceeding was
75 actually employed before the commencement of any legislative session and is a



76 member of the Legislature or President of the Senate, that fact is sufficient cause
77 for the adjournment or continuance of the action or proceeding for the duration of
78 any legislative session. Finally, the existing statute provides that the adjournment or
79 continuance must be granted without the imposition of terms.

80 In 2017, a state district court in Clark County found that Nevada’s existing
81 legislative continuance statute is “unconstitutional as written as it violates the
82 separation of powers doctrine of the Nevada Constitution by allowing the
83 legislature to commandeer the inherent power of the judiciary to govern its own
84 procedures, removing all discretion from the Court.” (*Degraw v. Eighth Jud. Dist.*
85 *Ct.*, 134 Nev. Adv. Op. 43, 419 P.3d 136, 138 (2018)) The district court also stated
86 that “[t]here are instances in which the postponement of an action would result in
87 irreparable harm or defeat an existing right, and emergency relief is warranted. In
88 those instances, the Court must be able to be allowed to exercise discretion.”
89 (*Degraw*, 419 P.3d at 138) Following the district court’s decision, a writ petition
90 was filed with the Nevada Supreme Court seeking review of the district court’s
91 decision. However, while the writ petition was pending, the parties resolved their
92 case in the district court. As a result, the Nevada Supreme Court concluded that
93 review of the district court’s decision was not warranted because the writ petition
94 had been rendered moot. Therefore, the Nevada Supreme Court did not reach the
95 merits of whether Nevada’s existing legislative continuance statute is
96 unconstitutional as written. (*Degraw*, 419 P.3d at 137-140)

97 **Section 1** of this bill revises Nevada’s existing legislative continuance statute to
98 provide that, except for certain emergency or extraordinary circumstances, a court
99 or administrative body is required to grant a requested continuance to a member of
100 the Legislature or the President of the Senate when he or she is: (1) a party to any
101 judicial or administrative action or proceeding during the legislative session; or (2)
102 an attorney for such a party, so long as he or she was actually employed as the
103 party’s attorney before the legislative session. **Section 1** also provides that the
104 continuance is effective for the duration of the legislative session and for an
105 additional 7 calendar days following the session, unless a shorter period is
106 requested by the person asking for the continuance. **Section 1** further provides that
107 the continuance must be granted without the imposition of any bond, costs or other
108 terms. Finally, **section 1** provides that if any party objects to the requested
109 continuance, the court or administrative body cannot deny the requested
110 continuance, in whole or in part, unless the objecting party satisfies the burden to
111 prove that, as a direct result of emergency or extraordinary circumstances, the
112 objecting party: (1) has a substantial existing right or interest that will be defeated
113 or abridged if the requested continuance is granted; and (2) will suffer substantial
114 and immediate irreparable harm if the requested continuance is granted.

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

1 **Section 1.** NRS 1.310 is hereby amended to read as follows:
2 1.310 1. ~~{f-a}~~ *Except as otherwise provided in subsection 3,*
3 *if a person:*
4 *(a) Is a member of the Legislature or the President of the*
5 *Senate;*
6 *(b) During any regular or special session of the Legislature, is:*
7 *(1) A party to any action or proceeding in any court or before*
8 *any administrative body ~~is a member of the Legislature of the State~~*



1 of Nevada, or is President of the Senate, that fact is sufficient cause
2 for the adjournment or continuance of the action or proceeding,
3 including, without limitation, any discovery or other pretrial or
4 posttrial matter involved in the action or proceeding, for the duration
5 of any legislative session.

6 ~~— 2. If an] ; or~~

7 (2) An attorney for a party to any action or proceeding in any
8 court or before any administrative body [;] who was actually
9 employed *as the party's attorney* before the commencement of [any
10 legislative] the session [, is a member of the Legislature of the State
11 of Nevada, or is President of the Senate, that fact is sufficient cause
12 for the adjournment or] ; and

13 (c) Files with the court or administrative body a motion or
14 request for a continuance of the action or proceeding pursuant to
15 this section,

16 *↳ the court or administrative body shall grant the* continuance of
17 the action or proceeding, including, without limitation, any
18 discovery or other pretrial or posttrial matter involved in the action
19 or proceeding, *subject to the provisions of subsection 2.*

20 2. A continuance granted pursuant to subsection 1 must be:

21 (a) Effective for [the] :

22 (1) The duration of [any legislative session].

23 ~~— 3. The adjournment or continuance provided for in subsections~~
24 ~~1 and 2 must be granted] the session and for an additional 7~~
25 *calendar days following the session; or*

26 (2) A shorter period if requested by the person who filed the
27 motion or request for a continuance of the action or proceeding.

28 (b) Granted without the imposition of any bond, costs or other
29 terms.

30 3. If any party objects to a motion or request for a
31 continuance that is filed pursuant to subsection 1, the court or
32 administrative body shall not deny the requested continuance, in
33 whole or in part, unless the objecting party satisfies the burden to
34 prove that, as a direct result of emergency or extraordinary
35 circumstances, the objecting party:

36 (a) Has a substantial existing right or interest that will be
37 defeated or abridged if the requested continuance is granted; and

38 (b) Will suffer substantial and immediate irreparable harm if
39 the requested continuance is granted.

40 **Sec. 2.** The amendatory provisions of this act apply to any
41 judicial or administrative proceedings:

42 1. Commenced on or after the effective date of this act; or

43 2. Commenced before the effective date of this act if the
44 proceedings are pending or otherwise unresolved on the effective
45 date of this act.



1 **Sec. 3.** This act becomes effective upon passage and approval.

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